United States Court of Appeals

for the Second Circuit

APPENDIX

75-4145

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-4145

WNCN LISTENERS' GUILD,

Petitioner,

—v.—

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,

Respondents,

STARR WQIV, INC.,

Intervenor.

ON A PETITION FOR REVIEW FROM A DETERMINATION OF FEDERAL COMMUNICATIONS COMMISSION

PETITIONER'S APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
DEC 15 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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APPENDIX

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IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

WNCN LISTENERS' GUILD, Peittioner,	)	
v.	)	No. 75-4145
FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES OF AMERICA, Respondents.	)	
STARR WQIV, INC., Intervenor.	)	

CERTIFIED LIST OF ITEMS COMPRISING THE RECORD

1. Petition of WNCN Listeners' Guild (with Exhibits), filed September 23, 1974.

2. Motion for Stay, filed September 23, 1974 by WNCN Listeners' Guild.

3. Letter of September 27, 1974 (with Exhibits) from Starr WNCN, Inc. to Vincent J. Mullins.

4. Letter of September 30, 1974 (with Exhibits) from WNCN Listeners' Guild to Vincent J. Mullins.

5. Letter of October 3, 1974 (with attachment) from Benito Gaguine to Arthur Ginsburg.

6. Letter of October 3, 1974, from William B. Ray to WNCN Listeners' Guild.

7. Opposition to Petition of WNCN Listeners' Guild, filed October 4, 1974 by Starr WNCN, Inc.

8. Letter of October 10, 1974 (with attachment) from Howard J. Braun to Arthur Ginsburg.

9. Reply of WNCN Listeners' Guild to Opposition of Starr WNCN, Inc., filed October 21, 1974.

10. Application for Commission Review of Broadcast Bureau Fairness Complaint Decision Under Delegated Authority and Immediate Relief, filed November 4, 1974 by WNCN Listeners' Guild (with Exhibits).

11. Letter of November 5, 1974 (with attachment) from Frank W. Lloyd to Vincent J. Mullins.

12. Motion for Extension of Time to Oppose Application for Review, filed November 15, 1974 by Starr Broadcasting Group, Inc.

13. Letter of November 18, 1974 from Charles M. Firestone to Vincent J. Mullins.

14. Opposition to Motion for Extension of Time, filed November 22, 1974, by WNCN Listeners' Guild.

15. Memorandum Opinion and Order by Chief, Broadcast Bureau, released December 5, 1974.

16. Petition for Extension of Time, filed December 12, 1974 by Starr WNCN, Inc.

17. Letter of December 19, 1974, from Kristin Booth Glen, et al. to Vincent J. Mullins.

18. Opposition of Starr WNCN, Inc. to Application for Commission Review of Fairness Complaint Decision, filed December 23, 1974.

19. Reply to Opposition to Application for Commission Review of Fairness Complaint Decision filed January 6, 1975 by Kristin Booth Glen, et al.

20. Letter of January 7, 1975 (with attachment) from Frank W. Lloyd to Vincent J. Mullins.

21. Petition to Deny, filed February 4, 1975 by WNCN Listeners' Guild.

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22. Opposition to Petition to Deny, filed February 20, 1975, by Starr WNCN, Inc.

23. Reply to Opposition to Petition to Deny, filed April 10, 1975 by WNCN Listeners' Guild.

24. Memorandum Opinion and Order, FCC 75-539, released May 16, 1975.

EXPLANATION OF APPENDIX

The Appendix follows the Certified List of Items Comprising the Record with two exceptions:

1. For purposes of clarity, the original fairness complaints (letter and telegram) are included at the beginning, before the first item on the Certified List;

2. Where major pleadings are included on the List, we have included only those portions of the pleadings which involve the Fairness complaint. All exhibits referred to in the pages we have included are also attached unless otherwise noted.

A 4

MGMWSHT HSA
2-010332E253 09/10/74
ICS IPMNTZZ CSP
2037627018 MGM TDMT WILTON CT 134 09-10 0904A EDT
ZIP 20036

western union Mailgram

UNITED STATES POSTAL SERVICE

Exhibit B

FRANK LLOYD
CITIZEN COMMUNICATION CTR, 1914 SUNDERLAND PL NORTHWEST
WASHINGTON DC 20036

(THIS IS COPY OF TELEGRAM SENT TO ROGER STARR, PRESIDENT, STARR BROADCASTING CO, 2 WEST 45 ST, NEW YORK NY 10036)

GENTLEMEN: FOR THE PAST TWO WEEKS I HAVE HEARD EDITORIAL PRONOUNCEMENTS BY MR WILLIAM BUCKLEY JR, MS ELISE TOPAZ, AND OTHERS AT A FREQUANCY APPROACHING 1 PER HOUR, PRESENTING STARR BROADCASTING'S POSITION ON THE PUBLIC MATTER OF WNCN PROGRAMING. AS SPOKESMAN FOR THE ORGAIZATIO N KNOWN AS THE WNCN LISTENERS GUILD, I HEREBY REQUEST AN OPPORTUNITY TO REPLY TO THOSE EDITIORIAL STATEMENTS.
A REPLY MAY BE ADDRESSED TO ME AT MY HOME AT 51 OLD HIGHWAY WILTON CT 06897 OR (AFTER FRIDAY) TO THE WNCN LISTENERS GUILD AT 663 5 AVENUE NEW YORK CITY 10022. CORDIALLY,
MATTHEW C EDWARDS

09:04 EDT

MGMWSHT HSA

Exhibit A

A 5

September 12, 1974

Mr. Paul Wachsmith
Station Manager, WNCN
2 West 45th Street
New York, N.Y.10036

Dear Mr. Wachsmith:

I am writing on behalf of my client, The WNCN Listeners Guild, with regard to the telegram sent to your station on Tuesday, September 10th, by Mr. Matt Edwards on the organization's behalf. As Mr. Edwards has received no reply to date, I can only assume that the telegram was lost in the general flood of mail, which I am sure you are receiving. I would like, however, to call your attention to this most urgent matter and to elicit your immediate response.

Over the past two weeks, on a virtually hourly basis, Mr. William Buckley and various members of WNCN's staff, have been presenting taped editorial announcements with regard to the future of Station WNCN. Obviously, this issue is of the utmost importance to the station's listeners and to the public of this city as well. These announcements present only one side of the issue, i.e., that the classical music format is not economically viable for a commercial station and that the only way to retain the unique programming which WNCN has previously employed is through the means of a listener-sponsored station. No consideration whatsoever has been given to other alternatives, some of which, of course, might seem in the short term to be detrimental to the ownership of the station, but certainly to the public's good.

There has been no indication that WNCN has afforded or plans to afford an opportunity for presentation of contrasting views by any persons. The WNCN Listeners Guild is composed of many members of WNCN's listening public who take a strong interest in the future of classical music on the present broadcast band. This organization is ready and willing to provide a responsible spokesperson for views which contrast rather substantially with the editorial position the station has heretofore taken.

Under the general fairness doctrine, it seems clear that the listeners guild should be permitted time to state its position. Since failure to abide by the fairness doctrine would normally affect the likelihood of license renewal in 1975, I can only assume that your failure to respond to this entirely legitimate request has been an oversight which will be promptly rectified.

Please let me hear from you at your earliest possible convenience.

Very truly yours,

KRISTIN LOOTH GLEN

KLG:PS
By Hand

cc: Mr. William Buckley, Jr.
Chairman, Starr Broadcasting Corp.

Citizens Communication Center
1914 Sunderland Place N.W.
Washington, D.C.20036

Federal Communications Commission
Complaint Division
1919 M Street N.W.
Washington, D.C.

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PETITION OF WNCN LISTENERS' GUILD
Dated September 23, 1974

Pages 21-22,49-52,62

Exhibits C-4
C-5
C-12
C-14
J-5 (with attacments)
J-11 (with attachments)
J-13

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While enthusiasm for the pledge campaign orchestrated by Mr. Buckley arose early and absorbed the attention of most protestors, a number gradually became discontented and disenchanted with "Save WNCN". Val Adams, whose well-known column on radio appears in the N.Y. Daily News, was the first to point out in print that the only evidence available to the public on WNCN's financial condition was a vague statement from Starr that it is losing money. Adams, while not questioning Mr. Buckley's sincerity, noted that the pledge campaign, "Was an interesting way for him to try to get all those protestors off his back." N.Y. Daily News, Sept. 1, 1974, annexed as Exhibit C4.

On September 10 Byron Belt, Critic-at-Large for the prestigious Long Island Press, labelled the "Save WNCN" campaign "a master-piece of side-stepping the issues" and said it was diverting the public's attention from its rights to petition the F.C.C. for public hearings on the format change. Long Island Press, Sept. 10, 1974, annexed as Exhibit C14.

That day a group of WNCN listeners did organize to seek a stay of the format change pending full public hearings before the F.C.C. The group held a meeting, formulated objectives, approved proposed legal tactics, elected officers,

authorized the sending of a telegram to Starr demanding that time be provided under the Fairness Doctrine to reply to the editorials broadcast by licensee directors and station personnel for "Save WNCN", and approved a constitution in principle. The group adopted the name of WNCN Listeners' Guild.

With the assistance of the Standby Committee to Save WNCN, a separate group initially formed to assist in the "Save WNCN" effort but whose members became disillusioned by Buckley's activities on Starr's behalf, (see, e.g. Charles Roth Aff., Exh. J11,) the Guild has distributed petitions by which the public can make known its demand for public hearings on the format change; 1/ has coordinated its efforts with groups of listeners in New Jersey and Connecticut who are similarly organizing; and has prepared this petition.

As a result of the dubiousness of Starr's motives, the apparent ineffectuality of the "Save WNCN" proposal, 2/ and of awareness of the efforts of the WNCN Listeners' Guild and increased awareness of the efforts of the WNCN Listeners' Guild and more sophisticated as to the tactics of Starr and Mr. Buckley and increasingly aware of the manner in which they have

---

1/ Additional petitions are presently being circulated and will be promptly forwarded to the Commission when returned to the Listeners' Guild. Some have already been sent by mistake directly to the F.C.C.. See supra at p. 3, n. 1 . An early sampling of those received by the Guild is attached as Exh. S.

A 10 By withholding listener mail at this critical time, Starr has seriously impeded that public participation in the licensing process required by law and encouraged by the Commission. 1/ The failure to maintain the required files, and to permit public inspection thereof, is a serious violation of Commission Rules requiring the sanctions of §312(a).

(b) Violations of the Fairness Doctrine.

One day after his announcement of the proposed format change, Starr's Chairman, Buckley, was on the air describing a way--"the" way--in which the format could be saved. His "plan" for a listener-sponsored station on another channel was presented as the only alternative to a total loss of WNCN's classical programming to the listening public. This, as the instant petition demonstrates, was clearly not the only alternative.

1/ The letters would have given Petitioners vital information about the degree and numbers of public protest -- information which we would have specifically presented to the Commission. Further, they might well have facilitated Petitioners' efforts in contacting others in the community who would have directly supported the instant petition by writing to the F.C.C. or signing the attached petitions.

Thereafter Buckley and two of Starr's employees broadcast tapes (transcriptions of which are attached as Exhibit K) continuing this clear editorializing on virtually an hourly basis for more than two weeks. These tapes were entered in the station's programming logs as "Editorials," Robert J. Schack Aff., supra, Exh. J13.

The format change was clearly an issue of great importance to WNCN's listening public and one in which that public had already displayed enormous interest. Literally hours of the station's program time were filled with the clearest imaginable example of licensee editorializing in its own behalf. 1/

The station transfer proposal which Starr's agents editorialized on using WNCN's facilities could not but benefit the professional reputations of Starr and its chairman and redound to their financial benefit, whether or not the proposal was sincerely propounded, whether or not it ever is implemented.

As noted above, Starr and Buckley were initially the objects of almost universal acclaim for their proposal and would have received credit for their altruism if it did or didn't go through, if the enthusiasm and loyalty of WNCN's

1/ As the 1949 Editorializing Report stated, "Radio stations should not be used for the private interest ... of the particular persons who have been granted licenses, but in a manner which will serve the various groups which make up the community", 29 Fed. Reg. 10422 (1964). See In re Springfield Television Broadcasting Co., 4 R.R. 2d 681 (1965) (particular duty to air contrasting view when licensee is personally involved in the controversy.

listeners had not led them to analyze intensely the background of the format change and the feasibility of the station transfer proposal. See Statement of Facts, supra, pp. 17-23.

By diverting WNCN's audience into a pledge campaign and away from the F.C.C., Starr and its stockholders, such as Buckley, were immediately saved legal costs and profited by an unusually large upswing in their equity.

Starr's stock, which had fallen 17.5% to an all year low in the week before Buckley's announcement on the format change, Broadcasting, Sept. 2, 1974, supra, Exh. C 5, was one of the few electronic media stocks to rise when it gained 12.12% in the next week, Broadcasting, Sept. 9, 1974, annexed here as Exhibit C 12.

Such a turn-around would not have been possible if petitions such as the instant one had already been submitted to the Commission.

If, of course, petitioners had been completely misled by the editorials of Starr's agents into believing there was no alternative to the station transfer proposal, then the realized pecuniary benefits to Starr and its owners would have been even greater.

Directly and indirectly the editorials broadcast on WNCN improved the financial standing of Starr and its stock holders.

Under the Commission's longstanding rules and policies, which have been fully affirmed by the U.S. Supreme Court, such licensee editorializing places on the licensee an affirmative duty to seek out and present contrasting viewpoints about any issue on which it has editorialized. 1/

To date, Starr has not sought out or presented conflicting views. On the contrary, despite Petitioners' specific and repeated requests for an opportunity to supply a responsible spokesperson to present such a view, 2/ see Kristin Booth Glen Aff., Exh.J5, Starr has totally refused to present any views -- other than its own -- about this crucial, controversial issue. Such a clear and willful violation of the Commission's Fairness Doctrine, particularly as it appears designed to circumvent other rules and regulations and policies of the Commission, clearly requires the imposition of sanctions, 3/ including a revocation proceeding.

1/ See Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367, 377-8 (1969); In re Springfield Television Broadcasting Corp., 4R.R.2d 681 (1965). See also In re Pennsylvania Community Antenna Ass'n, Inc., 6 R.R. 2d 112 (1965)

2/ i.e., that the format change should be subject to public hearings held by the Commission, and that listeners had the alternative of requesting the Commission to hold such hearings.

3/ Petitioners have simultaneously requested a stay preserving the status quo on WNCN. This is particularly warranted to enable the New York listeners to receive a balance to WNCN's two weeks of near-constant editorializing on this controversial format change.

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CONCLUSION & PRAYER FOR RELIEF

For all of the above reasons, Petitioners pray that Starr's license to operate station WNCN be revoked or, in the alternative, that the Commission order Starr to file an immediate license renewal application, that a hearing be held to determine all of the substantial and material disputed factual issues raised herein and supported by affidavit and other specific evidence, and that all other appropriate relief be granted, including an immediate Fairness Doctrine remedy and protective order for public file materials.

In addition, in order to save petitioners and all WNCN listeners from the irreparable injury which they will suffer if WNCN's format is changed on October 5, and to maintain the jurisdiction of the Commission and the courtsoto effectively determine the issues here raised, Petitioners pray in a separate motion, filed herewith, for an order staying the proposed format change until such determination may reasonably be made.

Respectfully Submitted,

The WNCN Listeners Guild
663 5th Ave.
NYC, N.Y. 10022

EXHIBIT C4 A 15

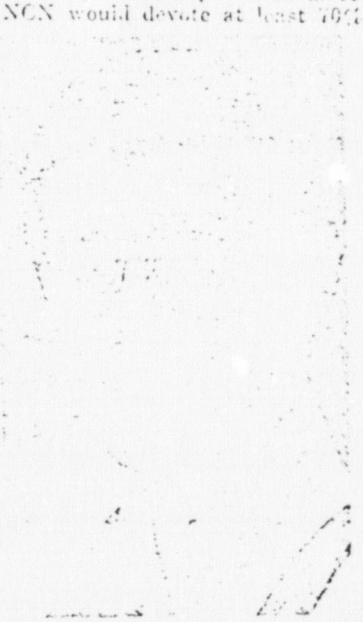
SUNDAY NEWS, SEPTEMBER 1, 1974 — LEISURE 20

RADIO ROUNDUP

By VAL ADAMS

PROTESTS ARE MOUNTING against the plan of WNCN to drop its format of classical music and switch to rock early in October under the new call letters of WQIV. One staunch fan of the station called The News and said he had gone to the WNCN office at 2 W. 45th St. and asked to see a copy of the license renewal application filed with the Federal Communications Commission in 1972. The application, which any station must make public upon request, said WNCN would devote at least 70% of its programing to classical music. The staunch fan wondered if WNCN really had the right to switch formats. The answer is yes. The only requirement is that a station notify the FCC of the change.

A woman on E. 93d St. wrote The News and labeled the WNCN development an "intolerable situation." She said she was starting a group called the Committee to Save WNCN. Another WNCN fan, a woman who is a nurse, phoned The News to say that elderly hospital patients listen to WNCN, particularly late at night. They are not interested in rock, she said. The nurse, too, wondered what could be done to stop the format change. In a way, it's like fighting City Hall, an endeavor that may score but whose track record is not outstanding.



Walter Spencer
Looking for security

A commercial radio station is licensed by the FCC to operate in the public interest, but the rock bottom truth is that a station owner operates for private gain. WNCN is losing money with a classical music format, it says, and believes it could do better with progressive rock. Understandably, WNCN's loyal fans feel that they are suddenly disowned. They care no more for rock than does the New York Philharmonic.

Last week, the protests began to worry William P. Buckley Jr., chairman of the Starr Broadcasting Group, owner of WNCN and 14 other radio and TV stations. Buckley went on WNCN and proposed a "Save WNCN" campaign in which the station call letters and music library would be devoted to a noncommercial channel. Buckley's sincerity cannot be questioned, but some thought it also was an interesting way for him to try to get all those protesters off his back.

A 16

EXHIBIT C5

BROADCASTING 9/2/74

Changing formats. Starr Broadcasting Group's WNCN(FM) New York, classical-music station for 17 years, will switch to pop-music format under new call letters, WQIV(FM), because expenses have exceeded income over past 18 months, according to Starr chairman, William F. Buckley Jr. Peter Starr, company's president, reported inquiries from three New York FM stations for WNCN's classical-record library, which he valued at $750,000. One inquiry was from nonprofit Pacifica Foundation's WBAI-FM New York, listener-sponsored station, which is re-evaluating its whole programing schedule because of critically low subscriber-renewal rate.

Company	Period/Ended	CURRENT AND CHANGE Revenues	Change	Net Income	Change	Per Share	YEAR EARLIER Revenues	Net Income	Per Share
Harris Corporation	1 yr. 6/30	532,141,000	+ 12.2%	18,191,000	+ 11.2%	2.92	447,469,000	16,363,000	2.69
Tektronix	1 yr. 5/25	271,428,000	+ 33.0%	21,353,000	+ 27.6%	2.47	202,855,000	16,739,000	1.91
United Cable Television Corp.	1 yr. 5/31	12,529,000	+ 34.5%	2,371,000	+ 11.6%	.37	9,318,000	2,125,000	.33
Wells, Rich, Greene Inc.	9 mo. 7/31	21,142,600	+ 5.5%	2,442,632	+ 0.4%	1.50	20,045,000	2,433,000	1.50

	Stock symbol	Exch.	Closing Wed. Aug. 28	Closing Wed. Aug. 21	Net change in week	% change in week	1974 High	1974 Low	P/E ratio	Approx. shares out (000)	Total market capitalization (000)
Broadcasting											
ABC	ABC	N	18	19 1/2	- 1 1/2	- 7.69	28 3/8	18	6	16,582	298,476
CAPITAL CITIES	CCB	N	27	29	- 2	- 6.89	39 1/4	22 3/4	10	7,164	193,428
CBS	CBS	N	31 3/4	34 3/4	- 3	- 8.63	40	25	9	28,092	891,921
CONCERT NETWORK*		O	1/4	1/4		.00	7/8	1/4		2,200	550
COX	COX	N	12 1/8	12 3/4	- 5/8	- 4.90	19 3/8	12 1/8	6	5,831	70,700
GROSS TELECASTING	GGG	A	7 1/2	8 1/4	- 3/4	- 9.09	13 5/8	7 1/2	5	800	6,000
LIN	LINB	O	2 1/8	2 7/8	- 3/4	- 26.08	6 3/4	2 1/8	2	2,297	4,881
MOONEY*	MOON	O	2 3/8	2 1/2	- 1/8	- 5.00	3 5/8	2 1/4	6	385	914
PACIFIC & SOUTHERN	PSOU	O	4 1/2	4	+ 1/2	+ 12.50	4 1/4	3 1/8	1	1,750	7,875
RAHALL	RAHL	O	2 3/4	2 1/2	+ 1/4	+ 10.00	6	2 1/2	6	1,297	3,566
SCRIPPS-HOWARD	SCRP	O	14	14 1/4	- 1/4	- 1.75	17 1/2	14	6	2,589	36,246
STARR	SBG	M	4 1/8	5	- 7/8	- 17.50	9	4 1/2	3	1,069	4,409
STORER	SBK	N	13 1/8	13 5/8	- 1/2	- 3.66	17 3/8	11 1/4	5	4,751	62,356
TAFT	TFB	N	14 7/8	15 7/8	- 1	- 6.29	23 3/8	14 7/8	5	4,011	59,663
WOODS COMM.*		O	5/8	3/4	- 1/8	- 16.66	1	1/4	5	292	182
								TOTAL		79,110	1,641,167
Broadcasting with other major interests											
ADAMS-RUSSELL	AAR	A	1 3/4	1 5/8	+ 1/8	+ 7.69	2 1/2	1 3/8	5	1,259	2,203
AVCO	AV	N	4 1/8	4 1/4	- 1/8	- 2.94	8 7/8	4	4	11,481	47,359
BARTELL MEDIA	BMC	A	1	1		.00	2 3/8	1	2	2,257	2,257
JOHN BLAIR	BJ	N	5	5 1/4	- 1/4	- 4.76	7 1/2	4 7/8	4	2,403	12,015
CAMPTOWN INDUSTRIES*		O	1/4	1/4		.00	7/8	1/4	3	1,138	284
CHRIS-CRAFT	CCN	N	2 1/8	2 1/8		.00	4 1/4	2 1/8	8	4,162	8,844
COMBINED COMM.	CCA	A	7 3/4	8	- 1/4	- 3.12	13	7 3/4	5	3,280	25,420
COWLES	CWL	N	5 1/4	5	+ 1/4	+ 5.00	7 1/8	5	10	3,969	20,837
DUN & BRADSTREET	DNB	N	19 7/8	23	- 3 1/8	- 13.58	36	19 7/8	13	26,555	527,780
FAIRCHILD IND.	FEN	N	5	5 5/8	- 5/8	- 11.11	6 3/4	4 1/8	7	4,550	22,750
FUQUA	FQA	N	6	6 1/2	- 1/2	- 7.69	10 3/4	6	3	7,273	43,638
GENERAL TIRE	GY	N	12 5/8	13 1/2	- 7/8	- 6.48	18 1/4	12 5/8	4	21,515	271,618
GLOBETROTTER	GLBTA	O	1 3/4	2	- 1/4	- 12.50	4 3/4	1 3/4	2	2,731	4,779
GRAY COMMUN.*		O	6	6		.00	8 1/2	6	4	475	2,850
HARTE-HANKS	HHN	N	7 3/4	8 1/8	- 3/8	- 4.61	14 1/4	7 3/4	6	4,330	33,557
JEFFERSON-PILOT	JP	N	23	22 1/2	+ 1/2	+ 2.22	38 1/4	22 1/8	11	24,126	554,898
KAISER INDUSTRIES*	KI	A	6	6 1/8	- 1/8	- 2.04	8 1/2	5 1/8	4	27,487	164,922
KANSAS STATE NET.*	KSN	O	3 1/2	3 1/2		.00	3 7/8	3 1/4	6	1,741	6,093
KINGSTIP	KTP	A	2 5/8	3 3/4	- 1 1/8	- 30.00	4 3/4	2 5/8	4	1,154	3,029
LAMA COMMUN.***		P	1 1/4	1 1/4		.00	1 1/4	1 1/8	25	475	593
LEE ENTERPRISES	LNT	A	14 1/2	14 3/8	+ 1/8	+ .86	14 1/4	10 3/4	9	3,352	48,604
LIBERTY	LC	N	8 3/4	8 7/8	- 1/8	- 1.40	15 5/8	8 3/4	4	6,632	50,030
MCGRAW-HILL	MHP	N	7 1/4	7 3/8	- 1/8	- 1.69	9	6	6	23,426	169,838
MEDIA GENERAL	MEG	A	20 3/4	21 3/4	- 1	- 4.59	26 1/2	20	9	3,552	73,704
MEREDITH	MOP	N	8 5/8	9 3/4	- 1 1/8	- 11.53	11 3/8	6 1/4	4	2,908	25,081
METROMEDIA	MET	N	5 3/4	6 1/8	- 3/8	- 6.12	10 5/8	5 3/4	6	6,447	37,070
MULTIMEDIA	MMED	O	10 1/2	10 3/4	- 1/4	- 2.32	14 1/4	10 1/2	7	4,388	46,074
NEW YORK TIMES CO.	NYKA	A	9 1/8	10	- 7/8	- 8.75	13 3/4	9 1/8	6	10,231	93,357
OUTLET CO.	OTU	N	7 1/2	8 1/8	- 5/8	- 7.69	9 3/4	7 1/2	3	1,379	10,342
POST CORP.	POST	O	6 1/2	6 1/2		.00	10 3/4	6	5	882	5,733
PSA	PSA	N	5 1/4	5 5/8	- 3/8	- 6.66	10	5 1/4	6	3,181	16,700
REEVES TELECOM	RBT	A	1 1/4	1 1/8	+ 1/8	+ 11.11	1 3/4	1 1/8	14	2,376	2,970
RIDDER PUBLICATIONS	RPI	N	14 1/2	15 1/2	- 1	- 6.45	14 5/8	11	9	8,305	120,422
ROLLINS	ROL	N	7	8	- 1	- 12.50	19 3/4	7	6	12,705	88,935
RUST CRAFT	RUS	A	6 1/2	6 7/8	- 3/8	- 5.45	10 1/4	6	5	2,366	15,379
SAN JUAN RACING	SJR	N	8 3/8	9	- 5/8	- 6.94	13 3/8	8 3/8	6	2,367	19,823
SCHERING-PLOUGH	SGP	N	50	46 1/2	+ 3 1/2	+ 7.52	74 3/8	46 1/2	23	53,823	2,691,150
SONDERLING	SOB	A	5	5 1/4	- 1/4	- 4.76	10	5	3	788	3,940
TECHNICAL OPERATIONS	TO	A	3 3/4	3 5/8	+ 1/8	+ 3.44	6 3/4	3 5/8	4	1,364	5,040
TIMES MIRROR CO.	TMC	N	10 3/4	11 1/2	- 3/4	- 6.52	17 5/8	10 3/4	7	31,385	337,388
TURNER COMM.***		O	3 3/8	3 3/8		.00	4	3	6	1,373	4,633
WASHINGTON POST CO.	WPO	A	17 1/4	18	- 3/4	- 4.16	24 3/8	14 3/4	6	4,749	81,920
WOMETCO	WOM	N	7 1/2	7 5/8	- 1/8	- 1.63	10 1/4	7 1/2	5	6,034	45,255
								TOTAL		346,354	5,757,122
Cablecasting											
AMECO**	ACO	O	1/8	7/8	- 3/4	- 85.71	1 7/8	1/8		1,200	150

EXHIBIT C12

A 18

Broadcasting Sep 9 1974
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A hand-me-down classical station?

Starr set to change WNCN New York to pop and promises to donate record library to station that promises to go noncommercial

Last week brought good news for New York classical music addicts. The staff and record library (and maybe even the call letters) of the Starr Broadcasting Group's WNCN(FM) there may end up on another existing FM station in the city when WNCN goes to a pop-music format as WQIV(FM) on Oct. 1.

On-air appeals for money by William F. Buckley Jr., the chairman of Starr, to keep WNCN's 24-hour-a-day classical-music format going brought in $150,000 in the first week alone, according to sources at WNCN.

Peter Starr, the president of the company, said Wednesday (Sept. 4) that he will make a deal soon with one of three FM stations in New York: a low-kilowatt station that would absorb the staff, the library and the call letters; a station already playing some classical music that would commit itself to going classical 24 hours a day; or a major classical station that would expand its service with the addition of the record library (valued at $750,000) and some of WNCN's ex-staffers.

Mr. Starr refused to reveal the identities of the three stations but pointed out that whichever station is chosen as the recipient of the record library (free of charge) will, as part of the agreement, have to become noncommercial (if it's not noncommercial already). "Then," he said, "all monies collected as a result of our fund-raising drive will be turned over to that station to pay its costs of operation for the first couple of years."

He added that WNCN's revenue losses over the past 18 months (Starr bought the station in Jan. 1973) dictated the change in format. He cited statistics from a recent study: a full 13% of the time on commercial radio stations in New York is given over to classical music, but only 4% of total broadcast revenues accrue to these stations. And WNCN is pocketing only ½ of 1% of the total broadcast revenues, although it needs at least 2% of them just to break even, according to Mr. Starr. "It's sad to say," he continues, "but New York can support only one commercial classical-music station, and that one is WQXR, which has a powerful signal on both AM and FM."

He thinks the Starr group will make money out of the new pop format because "the universe of potential pop-music listeners in New York is around 18 million people. With classical music, you've got a base of only about 1.2 million."

One classical buff who'll be driven away by the new format is Chairman Buckley himself. As he said the other day, "I have no intention whatever of listening to it ever under the new format."

	Stock symbol	Exch.	Closing Wed. Sept. 4	Closing Wed. Aug. 28	Net change in week	% change in week	1974 High	1974 Low	P/E ratio	*Approx. shares out (000)	Total market capitalization (000)
Broadcasting											
ABC	ABC	N	14 5/8	18	- 3 3/8	- 18.75	28 3/8	14 5/8	5	16,582	242,511
CAPITAL CITIES	CCB	N	25	27	- 2	- 7.40	39 1/4	22 3/4	9	7,164	179,100
CBS	CBS	N	32 5/8	31 3/4	+ 7/8	+ 2.75	40	25	9	28,092	916,501
CONCERT NETWORK*		O	1/4	1/4	.00		7/8	1/4		2,200	550
COX	COX	N	10 5/8	12 1/8	- 1 1/2	- 12.37	19 3/8	10 5/8	5	5,631	61,954
GROSS TELECASTING	GGG	A	7 1/2	7 1/2	.00		13 5/8	7 1/2	5	800	6,000
LIN	LINB	O	2 1/8	2 1/8	.00		3 3/4	2 1/8	2	2,297	4,881
MOONEY*	MOON	O	2 1/4	2 3/8	- 1/8	- 5.26	3 5/8	2 1/4	6	385	866
PACIFIC & SOUTHERN	PSOU	O	4 3/4	4 1/2	+ 1/4	+ 5.55	4 1/4	3 1/8	1	1,750	8,312
RAHALL	RAHL	O	2 1/2	2 3/4	- 1/4	- 9.09	6	2 1/2	5	1,297	3,242
SCRIPPS-HOWARD	SCRP	O	14	14	.00		17 1/2	14	6	2,589	36,246
STARR	SRG	M	4 5/8	4 1/8	+ 1/2	+ 12.12	9	4 1/8	4	1,069	4,944
STORER	SRK	N	12 1/8	13 1/8	- 1	- 7.61	17 1/8	11 1/8	5	4,751	57,605
TAFT	TFB	N	13 1/2	14 7/8	- 1 3/8	- 9.24	23 3/8	14 7/8	5	4,011	54,148
WOODS COMM.*		O	5/8	5/8	.00		1	1/4	5	292	182
								TOTAL		79,110	1,577,042
Broadcasting with other major interests											
ADAMS-RUSSELL	AAR	A	1 5/8	1 3/4	- 1/8	- 7.14	2 1/2	1 3/8	5	1,259	2,045
AVCO	AV	N	3 7/8	4 1/8	- 1/4	- 6.06	8 7/8	3 7/8	4	11,481	44,488
BARTELL MEDIA	BMC	A	7/8	1	- 1/8	- 12.50	2 3/8	7/8	2	2,257	1,974
JOHN BLAIR	BJ	N	4 5/8	5	- 3/8	- 7.50	7 1/2	4 5/8	4	2,403	11,113
CAMPTOWN INDUSTRIES*		O	1/4	1/4	.00		7/8	1/4	3	1,138	284
CHRIS-CRAFT	CCN	N	1 7/8	2 1/8	- 1/4	- 11.76	4 1/4	1 7/8	7	4,162	7,803
COMBINED COMM.	CCA	A	7 7/8	7 3/4	+ 1/8	+ 1.61	13	7 3/4	5	3,280	25,830
COWLES	CWL	N	4 7/8	5 1/4	- 3/8	- 7.14	7 1/8	4 7/8	9	3,969	19,368
DUN & BRADSTREET	DNB	N	18 7/8	19 7/8	- 1	- 5.03	36	18 7/8	12	26,555	501,225
FAIRCHILD IND.	FEN	N	4 5/8	5	- 3/8	- 7.50	6 3/4	4 1/8	6	4,550	21,043
FUQUA	FOA	N	5 3/4	6	- 1/4	- 4.16	10 3/4	5 3/4	3	7,273	41,819
GENERAL TIRE	GY	N	12 1/2	12 5/8	- 1/8	- .99	18 1/4	12 1/2	3	21,515	268,937
GLOBETROTTER	GLBTA	O	1 3/4	1 3/4	.00		4 3/4	1 3/4	2	2,731	4,777
GRAY COMMN.*		O	5 5/8	6	- 3/8	- 6.25	8 1/2	5 5/8	4	475	2,671
HARTE-HANKS	HHN	N	7 1/2	7 3/4	- 1/4	- 3.22	14 1/4	7 1/2	6	4,330	32,475
JEFFERSON-PILOT	JP	N	21 1/2	23	- 1 1/2	- 6.52	38 1/4	21 1/2	10	24,126	518,709
KAISER INDUSTRIES*	KI	A	5 1/8	6	- 7/8	- 14.58	8 1/2	5 1/8	3	27,487	140,870
KANSAS STATE NET.*	KSN	O	3 1/2	3 1/2	.00		3 7/8	3 1/4	6	1,741	6,023
KINGSTIP	KTP	A	2 1/2	2 5/8	- 1/8	- 4.76	6 3/4	2 1/2	4	1,154	2,885
LAMB COMMUN.***		P	1 1/4	1 1/4	.00		1 1/4	1 1/8	25	475	593
LEE ENTERPRISES	LNT	A	14 5/8	14 1/2	+ 1/8	+ .86	16 1/4	10 3/4	9	3,352	49,023
LIBERTY	LC	N	8 7/8	8 3/4	+ 1/8	+ 1.42	15 5/8	8 3/4	4	6,632	58,859
MCGRAW-HILL	MHP	N	6 3/8	7 1/4	- 7/8	- 12.06	9	6	5	23,426	149,349
MEDIA GENERAL	MEG	A	20 1/4	20 3/4	- 1/2	- 2.40	26 1/2	20	9	3,552	71,928
MEREDITH	MDP	N	8 5/8	8 5/8	.00		11 3/8	8 1/4	4	2,908	25,091
METROMEDIA	MET	N	5 1/4	5 3/4	- 1/2	- 8.69	10 5/8	5 1/4	5	6,447	33,846
MULTIMEDIA	MMED	O	9 7/8	10 1/2	- 5/8	- 5.95	14 1/4	9 7/8	7	4,388	43,331
NEW YORK TIMES CO.	NYKA	A	9	9 1/8	- 1/8	- 1.36	13 3/4	9	5	10,231	92,079
OUTLET CO.	OTU	N	7	7 1/2	- 1/2	- 6.66	9 3/4	7	3	1,379	9,653
POST CORP.	POST	O	6	6 1/2	- 1/2	- 7.69	10 3/4	6	4	882	5,292
PSA	PSA	N	5	5 1/4	- 1/4	- 4.76	10	5	6	3,181	15,905
REEVES TELECOM	RBT	A	1 1/8	1 1/4	- 1/8	- 10.00	1 3/4	1 1/8	13	2,376	2,673
RIDDER PUBLICATIONS	RPI	N	13	14 1/2	- 1 1/2	- 10.34	14 5/8	11	8	8,305	107,965
ROLLINS	ROL	N	6 1/2	7	- 1/2	- 7.14	19 3/4	6 1/2	6	12,705	82,582
RUST CRAFT	RUS	A	5 7/8	6 1/2	- 5/8	- 9.61	10 1/4	5 7/8	5	2,366	13,900
SAN JUAN RACING	SJR	N	8	8 3/8	- 3/8	- 4.47	13 3/8	8	6	2,367	18,936
SCHERING-PLOUGH	SGP	N	49 3/4	50	- 1/4	- .50	74 3/8	46 1/2	23	53,823	2,677,694
SONDERLING	SOB	A	4 1/4	5	- 3/4	- 15.00	10	4 1/4	2	788	3,349
TECHNICAL OPERATIONS	TO	A	3 1/2	3 3/4	- 1/4	- 6.66	6 3/4	3 1/2	3	1,344	4,704
TIMES MIRROR CO.	TMC	N	9 3/4	10 3/4	- 1	- 9.30	17 5/8	9 3/4	6	31,385	306,003
TURNER COMM.***		O	3 3/8	3 3/8	.00		4	3	6	1,373	4,633
WASHINGTON POST CO.	WPO	A	17	17 1/4	- 1/4	- 1.44	24 3/8	14 3/4	6	4,749	80,733
WOMETCO	WOM	N	7 1/4	7 1/2	- 1/4	- 3.33	10 1/4	7 1/4	5	6,034	43,746
								TOTAL		346,354	5,556,239
Cablecasting											
AMECO**	ACO	O	7/8	1/8	+ 3/4	+ 600.00	1 7/8	1/8		1,200	1,050
AMER. ELECT. LABS	AELBA	O	1	1 1/8	- 1/8	- 11.11	2 1/8	3/4	3	1,673	1,673
AMERICAN TV & COMM.	ATV	O	6 3/4	7 1/4	- 1/2	- 6.89	19 1/4	6 3/4	16	3,141	21,471
ATHENA COMM.**		O	1/4	1/4	.00		3/4	1/4		2,374	593
BURNUP & SIMS	BSIM	G	4 5/8	4 5/8	.00		24 1/8	4 5/8	5	7,907	36,569
CABLECOM-GENERAL	CCG	A	2	2	.00		4 1/2	1 3/4	11	2,560	5,120
CABLE FUNDING*	CFUN	O	4 1/2	4 1/2	.00		7 3/8	4 1/2	20	1,121	5,044
CABLE INFO.		O	1/4	1/4	.00		3/4	1/4	1	663	165

	Stock symbol	Exch.	Closing Wed. Sept. 4	Closing Wed. Aug. 28	Net change in week	% change in week	1974 High	1974 Low	P/E ratio	Approx. shares out (000)	Total market capitalization (000)
CITIZENS FIN.**	CPN	A	1 5/8	1 3/8	+ 1/4	+ 18.18	4 1/4	1 3/8	8	2,697	3,982
COMCAST*		O	2 1/2	2 1/2		.00	2 1/2	1 1/2	10	1,705	4,262
COMMUNICATIONS PROP.	CCMU	O	1 1/2	1 1/2		.00	3 3/8	1 3/8	17	4,761	7,141
COX CABLE	CXC	A	4	3 7/8	+ 1/8	+ 3.22	15 1/4	3 7/8	7	3,560	14,240
ENTRON*	ENT	O	5/8	5/8		.00	7/8	1/2	4	1,358	848
GENERAL INSTRUMENT	GRL	N	6 3/4	7 3/4	- 1	- 12.90	17 1/8	6 3/4	4	7,060	47,655
GENERAL TV*		O	1 1/4	1 1/4		.00	1 1/2	3/4	63	1,000	1,250
SCIENTIFIC-ATLANTA	SFA	A	5 1/2	5 3/8	+ 1/8	+ 2.32	9 1/2	5 3/8	6	917	5,043
TELE-COMMUNICATIONS**	TCOM	O	1 1/4	1 3/8	- 1/8	- 9.09	5 3/4	1 1/4		5,181	8,474
TELEPROMPTER**	TP	N	1 7/8	2 5/8	- 3/4	- 28.57	8 1/4	1 7/8		16,013	30,024
TIME INC.	TL	N	33 3/4	30 3/4	+ 3	+ 9.75	40 1/4	30 3/4	7	9,936	337,027
TOCOM*	TOCM	O	3	3		.00	4	3 3/4	10	1,795	7,853
UA-COLUMBIA CABLE	UACC	O	4 3/8	4 3/8		.00	4 5/8	2	40	1,879	3,758
UNITED CABLE TV CORP	UCTV	O	2	2 1/8	- 1/8	- 5.88	4 5/8	2		3,850	13,475
VIACOM	VIA	N	3 1/2	3 5/8	- 1/8	- 3.44	7 1/2	3 1/2	5	2,534	3,801
VIKOA**	VIK	A	1 1/2	1 5/8	- 1/8	- 7.69	4	1 1/2	6		
								TOTAL		85,609	560,822

Programing

COLUMBIA PICTURES**	CPS	N	1 7/8	1 5/8	+ 1/4	+ 15.38	4 3/4	1 5/8		6,748	12,652
DISNEY	DIS	N	31	33 1/2	- 2 1/2	+ 7.46	54 1/2	31	19	29,155	903,805
FILMWAYS	FWY	A	2 1/2	2 3/4	- 1/4	- 9.09	6	2 1/2	4	1,791	4,477
FOUR STAR			3/4	3/4		.00	1 3/8	5/8	1	665,950	499,462
GULF + WESTERN	GW	N	19 1/8	19 1/2	- 3/8	- 1.92	29 1/8	18 3/8	4	14,088	269,433
MCA	MCA	N	20 1/4	20 1/2	- 1/4	- 1.21	25 1/2	19 1/4	6	8,386	169,816
MGM	MGM	N	13 1/4	13 3/8	- 1/8	- .93	16 3/8	9 1/4	13	5,918	78,413
TELE-TAPE****		O	1/2	1/2		.00	3/4	1/8		2,190	1,095
TELETRONICS INTL.*		O	2 1/8	2 1/4	- 1/8	- 5.55	4 1/8	2 1/8	4	943	2,003
TRANSAMERICA	TA	N	5 1/2	5 7/8	- 3/8	- 6.38	10 3/8	5 1/2	4	65,115	358,132
20TH CENTURY-FOX	TF	N	5 7/8	5 3/4	+ 1/8	+ 2.17	9 1/8	4 3/4	9	8,280	48,645
WALTER READE**	WALT	O	1/4	1/4		.00	1/2	1/8		4,467	1,116
WARNER	WCI	N	7 3/4	9 1/4	- 1/2	- 5.05	18 1/2	7 3/4	3	16,317	126,456
WRATHER	WCO	A	4 1/2	4 1/2		.00	8 1/8	4 1/8	50	2,229	10,030
								TOTAL		831,577	2,485,535

Service

BARD INC.		O	11 1/2	11 3/8	+ 1/8	+ 1.09	14 1/4	10	5	2,513	28,899
COMSAT	CQ	N	24	24 7/8	- 7/8	- 3.51	40 3/8	24	6	10,000	240,000
CREATIVE MANAGEMENT	CMA	A	3 3/8	3	+ 3/8	+ 12.50	4 5/8	3	4	1,016	3,429
DOYLE DANE BERNBACH	DDYL	O	6 1/2	6 3/4	- 1/4	- 3.70	11 1/2	6 1/2	3	1,796	11,674
ELKINS INSTITUTES**	ELKN	O	3/8	3/8		.00	5/8	1/4		1,897	711
FOOTE CONE & BELDING	FCB	N	8	7	- 1	- 14.28	11 1/4	6	4	2,065	12,390
GREY ADVERTISING	GREY	O	6 1/2	6 1/2		.00	8 3/8	6 1/2	3	1,255	8,157
INTERPUBLIC GROUP	IPG	N	8 1/2	9 1/8	- 5/8	- 6.84	13	8 1/2	3	2,319	19,711
MARVIN JOSEPHSON**	MRVN	O	3 1/4	4 1/2	- 1 1/4	- 27.77	8 1/2	3 1/4	2	802	2,606
MCI COMMUNICATIONS*	MCIC	O	1 3/4	1 7/8	- 1/8	- 6.66	6 1/2	1 5/8		12,912	22,596
MOVIELAB	MOV	A	3/4	3/4		.00	1 5/8	5/8	4	1,407	1,055
MPO VIDEOTRONICS**	MPO	A	1 1/4	1 3/8	- 1/8	- 9.09	2 5/8	1 1/8		539	673
NEEDHAM, HARPER	NDHMA	O	4 1/4	4 1/4		.00	7 1/2		2	918	3,901
A. C. NIELSEN	NIELA	O	10	11 1/8	- 1 1/8	- 10.11	28	9 7/8	9	10,598	105,980
OGILVY & MATHER	OGIL	O	12 1/2	12 3/4	- 1/4	- 1.96	17 1/4	12 1/2	5	1,607	22,587
PKL CO.***	PKL	O	1	1		.00	1 3/4	1/4	6	818	818
J. WALTER THOMPSON	JWT	N	6 7/8	7	- 1/8	- 1.78	12	6 7/8	16	2,624	18,040
UNIVERSAL COMM.***		O	5/8	5/8		.00	3/4	1/2	1	715	446
WELLS, RICH, GREENE	WRG	N	5 1/2	5 5/8	- 1/8	- 2.22	9 5/8	5 1/2	3	1,632	8,976
								TOTAL		57,633	512,647

Electronics

AMPEX	APX	N	3 1/8	3 5/8	- 1/2	- 13.79	4 7/8	2 7/8	8	10,878	33,993
CCA ELECTRONICS*	CCAE	O	1 1/8	1 1/8		.00	1 1/8	5/8	2	881	991
COMD. INC.	COM	A	2 1/4	2	+ 1/4	+ 12.50	3 7/8	2	6	1,542	3,469
COMPUTER EQUIPMENT	CEC	A	1 3/8	1 3/8		.00	2 1/8	1 1/4	8	2,333	3,207
CONRAC	CAX	N	12 1/8	12 1/8		.00	21	12 1/8	5	1,261	15,289
GENERAL ELECTRIC	GE	N	35 1/8	35 5/8	- 1/2	- 1.40	65	7 1/2	11	182,114	6,396,756
HARRIS CORP.	HRS	N	14 3/4	15 3/8	- 5/8	- 4.06	33 1/2	14 3/4	5	6,229	91,877
INTERNATIONAL VID'O	IVCP	O	2 1/2	2 3/4	- 1/4	- 9.09	7 1/2	2 1/2	8	2,728	6,820
MAGNAVOX	MAG	N	6	6 1/8	+ 1 7/8	+ 30.61	9 7/8	4	44	17,799	142,392
3M	MMM	N	55 1/4	58	- 2 3/4	- 4.74	80 1/2	55 1/4	20	113,401	6,265,405
MOTOROLA	MOT	N	44 1/2	47 1/8	- 2 5/8	- 5.57	61 7/8	40 1/2	14	27,989	1,244,570
OAK INDUSTRIES	OEN	N	8 7/8	10	- 1 1/8	- 11.25	12 7/8	8 7/8	4	1,639	14,545
RCA	RCA	N	11 3/4	12 7/8	- 1 1/8	- 8.73	21 1/2	11 3/4	5	74,457	874,849
ROCKWELL INTL.	ROK	N	21 1/4	20 3/8	+ 7/8	+ 4.29	28 3/4	20 3/8	5	30,315	644,194
RSC INDUSTRIES	RSC	A	1 1/8	1	+ 1/8	+ 12.50	2 1/8	1	7	3,458	3,440
SONY CORP.	SNE	N	5 3/8	5 7/8		.00	29 7/8	5 7/8	11	165,625	973,046
TEKTRONIX	TEK	N	24 1/4	24 5/8	- 3/8	- 1.52	47 3/4	24 1/4	10	8,651	209,788
TELEMATION	TIMT	O	1 3/4	1 3/4		.00	2 3/4	1 5/8	10	1,050	1,837
TELEPRO IND.***		O	7	7		.00	8	2 1/2	44	475	3,325

	Stock symbol	Exch.	Closing Wed. Sept. 4	Closing Tues. Aug. 28	Net change in week	% change in week	1973-1974 High	1973-1974 Low	P/E ratio	Approx. shares out (000)	Total market capitalization (000)
VARIAN ASSOCIATES	VAR	N	7	7 3/8	- 3/8	- 5.08	13 1/4	6 5/8	6	6,617	46,319
WESTINGHOUSE	WX	N	9 1/2	10 1/2	- 1	- 9.52	24	9 1/2	7	87,876	834,822
ZENITH	ZE	N	15 5/8	16 1/4	- 5/8	- 3.84	31 5/8	15 5/8	7	18,797	293,703
								TOTAL		766,094	18,105,109
								GRAND TOTAL		2,166,377	28,797,396
Standard & Poor's Industrial Average			77.3	79.6	-2.3						

A-American Stock Exchange
M-Midwest Stock Exchange
N-New York Stock Exchange
O-Over the counter (bid price shown)
P-Pacific Coast Stock Exchange
††Stock did not trade on Wednesday; closing price shown is last traded price.

Over-the-counter bid prices supplied by Hornblower & Weeks, Hemphill-Noyes Inc., Washington.
Yearly highs and lows are drawn from trading days reported by *Broadcasting*. Actual figures may vary slightly.

P/E ratios are based on earnings-per-share figures for the last 12 months as published by Standard & Poor's Corp. or as obtained through *Broadcasting*'s own research. Earning figures are exclusive of extraordinary gains or losses.
†††Stock split.

* P/E ratio computed with earnings figures for last 12 months published by company.
† No annual earnings figures are available.
** No P/E ratio is computed; company registered net losses.

Company	Period/Ended	CURRENT AND CHANGE Revenues	Change	Net Income	Change	Per Share	YEAR EARLIER Revenues	Net Income	Per Share
Burnup & Sims	3 mo. 7/31	28,496,400	+ 0.4%	1,380,100	— 22.2%	.17	28,375,800	1,087,900	.20
Heritage Communications	6 mo. 6/30	433,699	+ 81.4%	(139,623)	— 17.4%	(.48)	239,081	(119,094)	(.34)
Scientific-Atlanta	year 6/30	26,351,000	+ 30.3%	935,000	+ 37.5%	1.02	20,214,000	690,000	.74

A 22

EXHIBIT J5

FEDERAL COMMUNICATIONS COMMISSION
OF THE UNITED STATES

IN THE MATTER OF THE PETITION OF

THE WNCN LISTENERS' GUILD

TO REVOKE THE LICENSE OF AFFIDAVIT

STARR BROADCASTING GROUP, INC.

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

KRISTIN BOOTH GLEN, being duly sworn, deposes and says:

I am an attorney, admitted to the practice of law before the Bar of the State of New York, and I represent the petitioners, the WNCN Listeners' Guild.

On information and belief, on Tuesday, 10 September 1974, Mr. Matthew C. Edwards, on behalf of the WNCN Listeners' Guild and after consulting with me, sent a telegram requesting an opportunity under the fairness doctrine to present a contrasting viewpoint to the editorialized announcements being made on WNCN by Mr. William Buckley Jr., Chairman of the Starr Broadcasting Group, Inc., and his staff regarding WNCN's format. The telegram was sent to Mr. Paul Wachsmith, General Manager of WNCN, at the station and copies were sent to Mr. Buckley and to the Commission.

On Thursday, 12 September 1974, when no response had been forthcoming, I sent a letter on my legal letterhead restating the WNCN Listeners' Guild's request and giving reasons that it should be granted. The letter was sent to Mr. Wachsmith with copies to Mr. Buckley and the Commission. The copy to Mr. Wachsmith was hand delivered to WNCN at 2 West 45th Street, New York, N.Y., and was signed for by a duly authorized employee of Starr WNCN, Inc. An exact carbon copy of the letter is appended here as Exhibit "A."

On Friday, 13 September 1974, still having received no response, I called the station several times and was told that no management personnel were present. At or about 5:30 p.m. that day I reached Mr. Wachsmith at the station, who told me that in his opinion and that of Mr. Buckley the WNCN Listeners' Guild did not have the right to present opposing viewpoints, but that he would speak to the station's lawyers on Monday. I informed him that if I did not hear from his lawyers by that date, I would proceed to file a fairness complaint with the Commission.

Once again I received no response.

On Tuesday, 17 September 1974, on information and belief, Mr. Edwards called Starr WNCN's lawyers, Fly, Shuebruk, Blume & Caguine, 45 Rockefeller Plaza, New York, N.Y., to ask for a response. He called repeatedly and to no avail until he stated that he was going to go to the Commission immediately. At this point he was at once put in touch with Peter Shuebruk, a senior partner in the law firm, who told him that the Guild's request was denied and that a letter would be composed in due course.

No reasons for the denial have ever been given.

The WNCN Listeners' Guild continues to assert that it possesses a legitimate and conflicting viewpoint on the matter of serious public interest to which Mr. Buckley and his staff have addressed themselves in broadcast editorials on a virtually hourly basis over the past three weeks.

Kristin Booth Glen

Kristin Booth Glen, Esq.

Sworn to before me this
18th day of September, 1974

Jeffrey E. Glen
Notary Public, State of New York
No. 31-1455225
Qualified in New York County
Commission Expires March 30, 1975

Exhibit A

A 24

September 12, 1974

Mr. Paul Wachsmith
Station Manager, WNCN
2 West 45th Street
New York, N.Y.10036

Dear Mr. Wachsmith:

I am writing on behalf of my client, The WNCN Listeners Guild, with regard to the telegram sent to your station on Tuesday, September 10th, by Mr. Matt Edwards on the organization's behalf. As Mr. Edwards has received no reply to date, I can only assume that the telegram was lost in the general flood of mail, which I am sure you are receiving. I would like, however, to call your attention to this most urgent matter and to elicit your immediate response.

Over the past two weeks, on a virtually hourly basis, Mr. William Buckley and various members of WNCN's staff, have been presenting taped editorial announcements with regard to the future of Station WNCN. Obviously, this issue is of the utmost importance to the station's listeners and to the public of this city as well. These announcements present only one side of the issue, i.e., that the classical music format is not economically viable for a commercial station and that the only way to retain the unique programming which WNCN has previously employed is through the means of a listener-sponsored station. No consideration whatsoever has been given to other alternatives, some of which, of course, might seem in the short term to be detrimental to the ownership of the station, but certainly to the public's good.

There has been no indication that WNCN has afforded or plans to afford an opportunity for presentation of contrasting views by any persons. The WNCN Listeners Guild is composed of many members of WNCN's listening public who take a strong interest in the future of classical music on the present broadcast band. This organization is ready and willing to provide a responsible spokesperson for views which contrast rather substantially with the editorial position the station has heretofore taken.

Under the general fairness doctrine, it seems clear that the listeners [illegible]ld should be permitted time to state its position. Si[illegible] failure to abide by the fairness doctrine would norm[illegible]lly affect the likelihood of license renewal in 1975, I c[illegible]n only assume that your failure to respond to this entirely legitimate request has been an oversight which will be promptly rectified.

Please let me hear from you at your earliest possible convenience.

Very truly yours,

KRISTIN BOOTH GLEN

KBG:PS
By Hand

cc: Mr. William Buckley, Jr.
Chairman, Starr Broadcasting Corp.

Citizens Communication Center
1914 Sunderland Place N.W.
Washington, D.C.20036

Federal Communications Commission
Complaint Division
1919 M Street N.W.
Washington, D.C.

A 26

MGMWSHT HSA
2-010332E253 09/10/74
ICS IPMNTZZ CSP
2037627018 MGM TDMT WILTON CT 134 09-10 0904A EDT
ZIP 20036

western union Mailgram

UNITED STATES POSTAL SERVICE

Exhibit B

FRANK LLOYD
CITIZEN COMMUNICATION CTR, 1914 SUNDERLAND PL NORTHWEST
WASHINGTON DC 20036

(THIS IS COPY OF TELEGRAM SENT TO ROGER STARR, PRESIDENT, STARR BROADCASTING CO, 2 WEST 45 ST, NEW YORK NY 10036)

GENTLEMEN: FOR THE PAST TWO WEEKS I HAVE HEARD EDITORIAL PRONOUNCEMENTS BY MR WILLIAM BUCKLEY JR, MS ELISE TOPAZ, AND OTHERS AT A FREQUANCY APPROACHING 1 PER HOUR, PRESENTING STARR BROADCASTING'S POSITION ON THE PUBLIC MATTER OF WNCN PROGRAMING. AS SPOKESMAN FOR THE ORGAIZATIO N KNOWN AS THE WNCN LISTENERS GUILD, I HEREBY REQUEST AN OPPORTUNITY TO REPLY TO THOSE EDITIORIAL STATEMENTS.
A REPLY MAY BE ADDRESSED TO ME AT MY HOME AT 51 OLD HIGHWAY WILTON CT 06897 OR (AFTER FRIDAY) TO THE WNCN LISTENERS GUILD AT 663 5 AVENUE NEW YORK CITY 10022. CORDIALLY,
MATTHEW C EDWARDS

09:04 EDT

MGMWSHT HSA

EXHIBIT J11

A 27 -

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

CHARLES ROTH, being duly sworn, deposes and says:

I am Executive Editor of the Jewish Post of New York. I listen to WNCN-FM regularly.

On August 29, 1974, I heard an announcement on WNCN-FM by William F. Buckley, Jr., chairman of the board of directors of Starr Broadcasting, concerning a change in the format of the station. Mr. Buckley appealed for pledges so that another New York station might continue the programming of WNCN. As a devoted listener to the station, the next day I called WNCN and offered the use of my offices and telephones for the purpose of raising funds to preserve the classical music programming which I enjoy.

On Monday, September 2, my wife, a WNCN employee and four volunteers and began receiving telephone calls at my offices in response to announcements carried over WNCN. During that first day, $25,000-$30,000 in pledges were received. I confirmed my offer of help to WNCN in writing on Aug 30 ~~the day I began to receive telephone calls in my office~~. (Attachment A)

After my first experience at talking with other concerned listeners, I had certain reservations about the vague plan outlined by Mr. Buckley to save WNCN. I voiced these reservations to him in my letter of September 3, 1974. (Attachment B) These concerns were reiterated to Mr. Buckley in my letter of September 6, 1974. (Attachment C)

A response to my letters was received from Mr. Buckley, under the date of September 9, 1974. (Attachment D) Subsequently, a "Committee to Save WNCN" was formed by Mr. Buckley. ~~It is headed by Theodore Sorenson.~~ On September

16, 1974, I addressed a letter to Mr. T. And the committee - Sorenson outlining my growing doubts about the fund raising campaign initiated by Mr. Buckley and aided by numerous volunteers. (Attachment E) My personal doubts grew out of Mr. Buckley's unwillingness to allow the volunteers to have continuous access to pledge lists and other data compiled by us for the purpose of developing support for a continuation of WNCN. Mail received on behalf of the campaign was never open to volunteer or general public inspection. Instead, most of the material produced by the volunteers in my offices was removed almost immediately after production and delivered to Mr. Buckley. It has been of no further use to our effort to perserve WNCN's classical music format.

Because I did not want to harm the possibility of success for the fund raising campaign or the remote chance that it might suceed in saving WNCN, I continued to allow my facilities to be used until the goal of $500,000 was reached. Indeed, I believe that my efforts may have caused Starr Broadcasting to carry through on an effort that they did not intend to succeed. It is now apparent to me that my good faith effort on behalf of preserving WNCN will not prevent the loss of the station's classical music service and may have diverted a more productive effort to cause the licensee to serve the public interest.

CHARLES ROTH

Sworn to before me this

17 day of September, 1974

Notary Public

THE
"IF YOU LET THE PEOPLE KNOW THEY CAN ACT INTELLIGENTLY"
Jewish Post of New York
101 Fifth Avenue, New York, N.Y. 10011 - 212-989-6262

A 29

CHARLES ROTH
Executive Editor

Save WNCN
2 West 45 st
New York, N.Y.

Dear Mr. Buckley,

I will send $25.00 per year on a regular basis.
(I'd rake it more if I could afford it.)

I will canvas your pledges on the upper west side to collect them and would organize a group of 4 others to do the same.

If WNCN has maintained a list of all the responses they have received over the years I would solicit such a list on the phone to gather pledges. We have a phone room of 19 phones at the Jewish Post for sociting advertising. If you had the lists I would gather as many as I could to phone on Tuesday and Wednesday nite prior to your meeting. If you have volunteers you could send them down.

I would absorb the phone bill for these two days.
(we also have direct lines to Westchester, Rockland and Long Island.)

I will run a free ad in the Jewish Post for one year urging membership in the Commercial free station.

I would run a fund raising cocktail party in my apartment building in September if you could send down someone to draw participation. perhaps Mr. Watson or Mr. Haas.

If there is some other way I can be helpful call on me.

Bless you for your efforts. I'm sure the support for a non-commercial classical music station will be forthcoming if you can hold out until mid September when everyone will have returned from vacation.

Sincerely,

Charles Roth
Vice president

Attachment B

A 30TME

"IF YOU LET THE PEOPLE KNOW THEY CAN ACT INTELLIGENTLY"

Jewish Post of New York
101 Fifth Avenue, New York, N.Y. 10011 - 212-989-6262

CHARLES ROTH
Executive Editor

September 3, 1974

Dear Mr. Buckley:

After hearing your announcement last Thursday I responded with the enclosed letter. As an afterthought I called the station and offered our phones for use over the Labor Day weekend. Ms. Topaz used our phones last night with a group of volunteers that she and I provided.

While I am grateful as a listener for your efforts in launching a listener sponsored classic music station the outpouring of feelings for WNCN from the listeners I talked to last night kindled many concerns and doubts about the manner in which the transition is being handled.

Let me add firstly that your generous offer to turn over the record collection, and perhaps the call letters is most magnanimous and would surely be appreciated by the hundreds of thousands of listeners.

Here are my concerns:

1. It is now apparent that the New York Magazine news break was true. Having all that time, your seeking a barometer over the Labor Day weekend instead of a carefully worked out plan for such measurement may be an inadequate and unjustified sampling.

2. As a public minded person, which your long record demonstrates, perhaps you should have organized a temporary committee, made up of culturally minded people from all walks of life, to represent the 400,000 WNCN devoted listeners in this entire matter.

THE
"IF YOU LET THE PEOPLE KNOW THEY CAN ACT INTELLIGENTLY"
Jewish Post of New York
101 Fifth Avenue, New York, N.Y. 10011 - 212-989-6262

A 31

CHARLES ROTH
Executive Editor

Regarding the above I urge you to do the following:

A. Choose from any source (not the least are the thousands who have responded to your plea) some 15 or 20 concerned citizens with some standing in the community to serve as a temporary committee to save WNCN. This group should represent the listeners.

B. Immediately launch a 24 hour campaign for call-in pledges with pleas being made by notables in the classical music field, the very able personnel at WNCN in addition to your present message and that of Ms. Topaz. Hopefully, these tapes would be broadcast every half hour or so, but of course never interrupting a piece of music to do so. With October 5th as a deadline this immediate action is essential.*

C. Request the present WNCN staff announcers to reminisce about WNCN and promote the cause. (On Monday night Fleetwood refused to announce the call-in number for pledges.)

*I have the New York Telephone Company geared up to install 20 phones in 24 hours. I am requesting Chase Manhattan Bank or some other public minded group to cover the phone bill cost of $840.00.

I trust you will accept the spirit of concern and friendliness in this letter.

Would you be good enough to let me have a reaction to the above as soon as possible.

In the meantime I am making my offices available in the evenings and continue to urge all my friends to

A 32

THE
"IF YOU LET THE PEOPLE KNOW THEY CAN ACT INTELLIGENTLY"
Jewish Post of New York
101 Fifth Avenue, New York, N.Y. 10011 - 212-989-6262

CHARLES ROTH
Executive Editor

join in your campaign to save WNCN.

Sincerely yours,

CHARLES ROTH

Mr. William F. Buckley
National Review
150 East 35th Street
New York, N.Y.

cc: Alise Topaz

Attachment C

A 33

THE
"IF YOU LET THE PEOPLE KNOW THEY CAN ACT INTELLIGENTLY"
Jewish Post of New York
101 Fifth Avenue, New York, N.Y. 10011 - 212-989-6262

CHARLES ROTH
Executive Editor

September 6, 1974

Dear Mr. Buckley,

I was told by Elise Topaz of the rapid and aggressive contacts you are making to locate a new home for WNCN. Bravo and more power to you.

In the next few days you will no doubt be making decisions that will affect the future of WNCN and her 400,000 devoted and inspired listeners. Since all such decisions are subject to review by the FCC and since you will require a board to register in Albany and for the I.R.S., I urge you once again to form some kind of temporary committee to join you in making the decisions which will affect the WNCN listeners.

I have the highest regard for your motives and actions in launching SAVE WNCN and your continued efforts in her behalf. Your role and outstanding achievement in saving WNCN will be remembered for years to come.

But it doesn't necessarily hold that those with the best of intentions hold also the best judgements. That's why government requires collective responsibility for all tax-free, non-profit public service organizations.

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THE
"IF YOU LET THE PEOPLE KNOW THEY CAN ACT INTELLIGENTLY"
Jewish Post of New York
101 Fifth Avenue, New York, N.Y. 10011 - 212-989-6262

CHARLES ROTH
Executive Editor

I trust you will respond by announcing a committee of distinguished people dedicated to saving WNCN to participate in the far-reaching decisions about to be made.

Enclosed is a bill for the tables and chairs that I paid for this morning. Please send me a check made out to the Jewish Post for the same amount. The phones will be billed to you direct. I will absorb all other costs.

Please let me hear from you.

Sincerely,

Charles Roth
Executive Editor

Mr. William F. Buckley
National Review
150 East 35th Street
New York, N.Y.

cc: Elise Topaz
Linda Rosen

CR:RA

Attachment 2

NATIONAL REVIEW · 150 East 35th Street, New York, New York 10016

Tel. 679-7330

A 35

WILLIAM F. BUCKLEY, JR.
Editor

September 9, 1974

Dear Mr. Roth:

Thank you for your letter. I quite agree with you, and have intended all along to broaden the participation. But committees only get in the way at the beginning, so I will not make the announcement until the end of next week. Thank you for writing.

Yours cordially,

Wm. F. Buckley Jr.

P.S. I am sending along the bill for payment.

Mr. Charles Roth
Executive Editor
THE JEWISH POST OF NEW YORK
101 Fifth Avenue
New York, N.Y. 10011

ATTachment E

A 36

THE
"IF YOU LET THE PEOPLE KNOW THEY CAN ACT INTELLIGENTLY"
Jewish Post of New York
101 Fifth Avenue, New York, N.Y. 10011 - 212-989-6262

September 16, 197

CHARLES ROTH
Executive Editor

Dear Mr. Sorenson and the Committee to Save WNCN:

We are writing to inform you that thousands of devoted WNCN listeners and volunteers who worked on the Save WNCN campaign are relying on you to act expeditiously, but completely in the best interest of continuing the 24-hour classical music format of WNCN.

Mr. Buckley's announced intention of merging with an existing station may serve that interest but only as a last resort.

Many of us now are beginning to have doubts about the possible collusion or conflict of interest by Mr. Buckley in the entire matter.

We know and fully respect your reputations and trust that you will in the course of your deliberations investigate the impetus for the Save WNCN drive and announce to the public whether in your estimation the action and course followed by Mr. Buckley was motivated entirely in the interest of WNCN.

The reference in his letter to me of September 9 indicating that committees get in the way is hardly the way one should act in any eleemosynary activity.

We are preparing a brief to the FCC and hope that your committee would read the brief and send a supportive affidavit to the FCC. We will make this available to you at the end of this week.

Could you use your position to prevail upon Mr. Buckley as Chairman of the Starr Broadcasting Group to agree to a stay of the present format at least until the FCC and the courts can deal with the brief.

A 37 C

THE
"IF YOU LET THE PEOPLE KNOW THEY CAN ACT INTELLIGENTLY"
Jewish Post of New York
101 Fifth Avenue, New York, N.Y. 10011 - 212-989-6262

CHARLES ROTH
Executive Editor

The pledges and correspondence to save WNCN of the last half a day of the drive were left here. The drive was held in my offices. When Elise Topaz came to pick up that material I told her of our suspicions and said we would forward the material directly to the committee. Tell me where to deliver this material.

May we have your guidance and response at the earliest time after your meeting tommorow.

Sincerely,

Charles Roth
Standby Committee and Listeners' Guild

CR: srp

Mr. Theodore C. Sorenson
345 Park Avenue
New York, New York. 10022.

A 38

EXHIBIT J13

FEDERAL COMMUNICATIONS COMMISSION
OF THE UNITED STATES

IN THE MATTER OF THE PETITION OF

THE WNCN LISTENERS' GUILD

AFFIDAVIT

TO REVOKE THE LICENSE OF

STARR BROADCASTING GROUP, INC.

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

ROBERT J. SCHACK, being duly sworn, deposes and says:

I am an attorney, awaiting admission to the Bar in the State of New York.

On September 13, 1974, at or about 3 p.m., at the offices of Starr WNCN, Inc., at 2 West 45th Street, New York City, New York, I spoke with Ms. Sarah Quacliata, Music Director for the station, and Ms. Pat Sweeney, Traffic Manager for it, after identifying myself as an officer of the WNCN Listeners' Guild.

After inspecting the entire Public Inspection File I asked Ms. Quacliata why it did not contain any letters dated after August 31, 1974, and in particular contained no letters referring to the proposed format change announced on August 29, 1974. She informed me that all such letters had been turned over to "Buckley's group [Save WNCN]." I asked her if all of the letters turned over had been addressed to Save WNCN and if none had been addressed to the station. She told me that "thousands of letters" had been received at the station objecting to the format change, variously addressed to the station's announcers, to the station itself,

and to Save WNCN, but that all letters, however addressed, referring to the format change, had been picked up by Save WNCN and that none had been retained for the Public Inspection Files at the station.

I asked Ms. Sweeney if she could estimate how often the taped announcements by William Buckley, David Dubal, and Elise Topaz, referring to the proposed format change and to Save WNCN, had been aired. She stated that she had been in charge of scheduling these announcements for air time. Based on her memory, without consulting the station's log, she estimated that she had scheduled the Buckley tapes to run about 10 times a day from the evening of the day the initial announcement of the change was made (August 28, 1974) through Wednesday, September 11, 1974, and the Dubal and Topaz tapes combined to run also about 10 times a day for the same period. But she noted that for a few days during this period she scheduled the tapes to run more frequently, at least once an hour. Ms. Sweeney stated that she had scheduled the Buckley, Dubal and Topaz tapes combined to run 5 or 6 times a day for the period Thursday, September 12, 1974, through Sunday, September 15, 1974, at the direction of the station's management.

When I asked her how these tapes had been identified in the log, she stated that they were entered as "editorials."

Sworn to before me this
10th day of September, 1974

MICHAEL D. RATNER
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-3231515
Qualified in New York County

R. J. SCHACK

A 40

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re	)
	)
Petition for Revocation of License of	)
STARR BROADCASTING GROUP, INC.,	)
to operate	)
Station WNCN-FM, New York, New York,	)
or	)
Immediate Submission of Renewal	)
Application	)
and	)
Resolution of Fairness Doctrine	)
Complaint and Other Relief	)

RECEIVED
SEP 23 1974
F. C. C.
OFFICE OF THE SECRETARY

MOTION FOR STAY

Comes now the WNCN Listeners' Guild, New York City, New York, petitioners to revoke the license of Starr Broadcasting Group, Inc. for Radio Station WNCN-FM, or for other special relief, and hereby moves pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. §154(i) and 303(r), for a stay preserving the status quo against any substantial deviation by WNCN-FM from its existing classical music format and from change of call letters, pending full hearing and decision on the above-referenced petition and fairness complaint, and judicial review thereof.

Petitioner WNCN Listeners' Guild is a substantial group of listeners in WNCN-FM's service area, with substantial roots in the community. It has petitioned for revocation or early renewal

application of WNCN-FM's license or other special relief in an extensive document submitted herewith, and hereby incorporated in this Motion by reference.[1/]

The Guild represents a substantial segment of the New York, New York listening audience and has standing to file this Motion. Joseph v. FCC, 404 F.2d 207 (D.C. Cir. 1968); Office of Communication of United Church of Christ v. FCC, 359 F.2d 994 (D.C. Cir. 1966).

Petitioner prays for Commission issuance of said stay preserving the status quo within seven days of the submission of this Motion, to be acted upon by Commission circulation if necessary, in order to have sufficient time to seek judicial review of any adverse ruling on this Motion by October 1, 1974. The announced date of change of WNCN-FM's format from classical to popular music is October 5, 1974.

FACTS

WNCN-FM, New York, New York, is licensed to Starr Broadcasting Group, Inc., licensee of 15 broadcast stations in the United States. Broadcasting Yearbook 1974, p. A-97. It acquired WNCN-FM in 1972 from the National Science Network, Inc. (NSN) on

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1/ The "Petition of the WNCN Listeners' Guild" is hereinafter referred to as "Petition". Because of its length (62 pages) and the length of its Exhibits (approximately 180 pages) and because it is filed simultaneously herewith, it is incorporated in full by reference.

A 42

the representation that it would continue the established classical music format on the station. 1/

WNCN-FM is the only 24-hour a day classical music station in New York City, an area served by approximately 70 AM and FM radio stations. Its format is unique for the reasons set forth in the accompanying Petition and supporting affidavits. 2/

On August 27, 1974, William F. Buckley, Jr., Chairman of the board of the licensee, announced that Starr plans to change WNCN's format to popular music on October 5, 1974, under the call sign of WQIV, and since that date has made frequent editorials and announcements over WNCN concerning this proposed change of format. WNCN has not, however, formally informed the Commission of its intention to change its format, even though it has applied for the new call letters.

The public outcry against loss of WNCN's classical format has been unprecedented in New York City. Even though Mr. Buckley and WNCN have constructed a diversionary, sweetheart citizen group to "Save WNCN", funneling much of the potential protest of the change of format to the station's personal and private use and control, and has failed to place such letters in WNCN's public file, in violation of Section 73.1202(f) of the Commission's Rules,

---

1/ See Assignee's Portion, WNCN 1972 Transfer Application, Form 314, Section IV-A, Exhibits 13-14. Petition, Exhibit Q.

2/ In the Petition, Petitioner has distinguished the classical-type music played on WQXR-AM-FM from the classical format on WNCN-FM. See especially, Affidavit of Ted Cohen, Exhibit J1.

47 CFR §73.1202(f), the WNCN Listeners' Guild, petitioner and movant herein, has received approximately 1200 protesting signatures as of this writing.[1/] All petitions will be forwarded to the Commission as expeditiously as possible. We ultimately expect over 15,000 signatures by October 1.[2/]

This public outcry has been spontaneous and genuine. The petitioner group, formed for the purpose of opposing the WNCN change of format, has been in existence only since September 10, 1974. It has not yet had sufficient funds to advertise its cause, and has been denied time on WNCN to respond to the station's frequent editorials and announcements regarding the change in format. (Petitioner has charged WNCN with willful violation of the Fairness Doctrine in its Petition, and exhibits (e.g., Exh. J5) and specifically requests that the Commission rule on this Fairness Doctrine complaint prior to October 1, 1974.)

The public support for WNCN's unique format has also been evidenced by a tremendous outpouring of financial support for WNCN's unique classical format. In response to WNCN requests for pledges to a potential non-commercial station offering WNCN's existing format (if one could be found), 20,000 listeners volunteered pledges of approximately $500,000 within about two weeks, and the

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1/ The Commission already received 300 such petition signatures.

2/ WNCN itself has received pledges from over 20,000 persons to financially support a noncommercial classical WNCN format.

Merlin Foundation promised an additional $100,000. (Petition, p. 19 and exhibits referred to therein). These pledges have far exceeded the initial estimate of $350,000 needed annually to run the station noncommercially, set by Starr on September 5 (when pledges had only reached $250,000), and even exceeded the revised Starr estimate of $500,000. Ibid.

Finally, a resolution calling for continued classical music service on WNCN is currently circulating in the New York City Council.

The WNCN existing format is thus both unique, serving a substantial segment of the New York City service area,[1/] and is clearly financially viable.[2/] The New York City area, on the other hand, is presently served by approximately 40 other radio stations with popular music formats (country and western, black, contemporary, jazz, rock or MOR).

If Starr is allowed to accomplish its format change prior to a public hearing, and judicial review thereof, the public would be irreparably injured. The loss of important musical service to the general public, the loss of audiences that would eventually injure the station's later attempt to obtain advertising and thus impair the chances of commerical financial viability

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1/ The audience for WNCN's unique format is estimated at 400,000. See Petition, Exhibits J1, J2, J8, J9, K11.

2/ See, e.g., Exhibits J3, J4, J10.

should the Commission rule in petitioner's favor, the eventual dismissal of employees expert in classical music, the dismantling of a classical music library evaluated by Starr at $750,000, all contribute to this irreparable injury. And, a fait accompli would clearly prevent effective remedy to petitioner's Fairness Doctrine complaint. Only the private interest of Starr would be served by allowing the change of format to occur without full public hearing. Most importantly, petitioner has significant likelihood of prevailing on the merits of its Petition, submitted herewith. 1/

In the closest analogous format change case recently decided by the Commission, it issued a stay of a grant of transfer of Station WCAS, Cambridge, Massachusetts pending a citizen group petition for reconsideration. Kaiser Broadcasting Corp., 45 F.C.C.2d 873 (1974).

ARGUMENT

I. A STAY OF WNCN'S EXISTING CLASSICAL MUSIC FORMAT AND CALL SIGN IS WARRANTED IN THE PUBLIC INTEREST

The principles controlling issuance of a stay are set forth in Virginia Petroleum Jobbers Association v. FPC, 259 F. 2d 921, 925 (D.C. Cir. 1958) as follows:

A. The likelihood that petitioner will prevail on the merits.

1/ The Petition calls for a public hearing on revocation of license, call for early submission of renewal application, fairness doctrine relief, a protective order on material to be contained in WNCN's public file, and other appropriate relief.

B. The showing of irreparable injury, although the greater the likelihood of success on the merits, the less injury required.

C. The harm to the other parties interested in the proceeding.

D. The weight of the public interest relative to the weight of private interests.

As set forth below, petitioners meet these criteria, and the Commission should issue a stay forthwith.

A. Petitioner Will Prevail On the Merits

The arguments for Commission disallowance of Starr's proposed change of format are set forth in full detail in the Petition and Exhibits accompanying this Motion and have been incorporated by reference herein. In its Petition, the Guild has demonstrated a likelihood of success on the merits. It has shown by sworn affidavits and strong circumstantial evidence that Starr has violated the spirit and the letter of the Communications Act of 1934 and of the Commission's Rules.

The change in format and call letters clearly warrant full public hearing, since the Guild has demonstrated a significant public outcry and that the classical format on WNCN is unique and financially viable. Citizens Committee to Save Progressive Rock v. FCC, 478 F.2d 926 (D.C. Cir. 1973). (See infra.)

Moreover there is a likelihood that the Commission will either revoke or deny WNCN's renewal of license for the allegations raised in the Petition, which include:

(1) Applying for a broadcasting license apparently without the good faith intent to operate in substantial compliance with its own proposed programming format throughout the term of WNCN's license;

(2) Proposing to operate, starting October 5, 1974, under a format substantially different from that for which it received its license, without making a showing that the new format would satisfy the public's needs and interests;

(3) Proposing to reduce the diversity of programming available to its community in abandoning a demonstrably unique classical music format and adopting a popular music format which already is aired on over half of the 70 radio stations serving New York City and the surrounding area;

(4) Authorizing, permitting or aiding and abetting in the removal or omission from WNCN's Public Inspection Files of mail from listeners protesting the proposed format change; in violation of 47 CFR §73.1202)(f) (1973);

(5) Denying repeated requests from petitioner for the opportunity to supply a responsible spokesperson to present on free time a conflicting view to that advanced by agents of the Starr organization in editorials on the format change, an issue of great importance to WNCN's audience and one in which that public had already demonstrated great interest;

(6) Preparing plans, and conducting negotiations to implement them, to change the format for which WNCN was licensed, all the while denying the existence of such plans in ambiguous and equivocating language, thus apparently pursuing a pattern of behavior in dereliction of Starr's duty of candor and truthfulness before the public and the Commission;

(7) Apparently continuing this pattern when public opposition to the format change grew vehement, by proposing, implementing and supporting a "Save WNCN" campaign as a diversionary effort, channeling the attention and energies of the public opposing the format change away from their rights to petition the Commission for redress;

(8) Apparently continuing this pattern by proposing, implementing or supporting the "Save WNCN" campaign, using WNCN's facilities, allegedly solely on behalf of another group, when the campaign in fact redounded to the material enrichment and professional reputation of Starr and its agents; and

(9) Proposing as part of this pledge effort to bind another station to adopt WNCN's format, a proposal which, if sincere, would render the other station liable to loss of license for abandoning its own programming responsibilities, thus negating the avowed purpose of the pledge effort, and which, if not sincere, forms part of the pattern of lack of candor which has surrounded WNCN's proposed format change.

With regard to the requirement of a public hearing on a change of format, the courts have set forth two basic issues, to be determined by hearing, once the general format question reaches public interest proportions, as has been amply demonstrated in the accompanying Petition and letters and petitions in support thereof.[1/] These are whether the format is unique and whether it is financially viable. Citizens Committee to Keep Progressive Rock, supra at 929.

1/ The court in Citizens Committee to Keep Progressive Rock v. FCC, 478 F.2d 926, 929, n. 7 (D.C. Cir. 1973), stated that "The degree of support for retention of a unique format can be of critical importance in what otherwise are 'close cases.'" Other cases where a hearing on change of format was ordered by the Court include Citizens Committee to Preserve WGKA v. FCC, 436 F.2d 263 (D.C. Cir. 1970) and Citizens Committee v. FCC (WONO), D.C. Cir. No. 71-1336, order issued May 13, 1971 (summarily reversing the Commission sua sponte on stay papers).

The Courts have sustained Commission refusal to hold a hearing on a change of format only in Lakewood Broadcasting Service v. FCC, D.C. Cir. No. 72-1757 (May 4, 1973). In Citizens Committee to Save WEFM v. FCC, D.C. Cir. 73-1057, Slip. Op., Nov. 15, 1973, the court has pending its en banc rehearing of the case.

Most recently, the Commission issued a stay of a licensee assignment grant already issued pending reconsideration on format change and other grounds. Kaiser Broadcasting Corp., 45 F.C.C.2d 873 (1974) (BAL-7963).

Clearly a hearing on these issues is warranted in this case.

As established in the Petition, the WNCN format is unique and is financially viable. WNCN's own editorials and the tremendous financial support pledged in response demonstrate these points as well as the exhibits attached to the Petition.[1/]

Thus, whether considered in a revocation hearing, a call for early renewal, or other Commission proceedings, the issues relating to WNCN's change of format must be considered in an evidentiary hearing, and the change must be denied in the public interest. The Commission has authority to so act under Sections 4(i), 303(r), 309, and/or 312 of the Communications Act.

Moreover, the other allegations raised in the Petition and supported by specific affidavits pose serious public interest questions as to Starr's qualifications to continue to operate WNCN-FM. These include violation of the Fairness Doctrine in a matter of the licensee's own private

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1/ In the Nation's largest market, even if the Commission were to recognize another station's format as comparable to WNCN's, which it is not, a second classical music service would clearly be indicated in a 70 station market, over a proposed "popular music" format which is essentially duplicated by more than half of the other stations. Citizens Committee to Save WEFM v. FCC, supra, Slip Op. at p. 5, n. 10, rehearing pending.

interest - the instant change of format - and misrepresentation or lack of candor in dealing with the Commission at the time of acquiring the station in 1972 and in dealing with the public since that time. The Commission has recently denied a license renewal on failure to disclose at time of acquisition the true programming intent of the applicant. Brandywine Main Line Radio v. FCC, 473 F.2d 16 (D.C. Cir. 1972), cert. denied, _____ U.S. _____.

Petitioners would point out that at least with regard to the Fairness Doctrine complaint contained in the Petition, the likelihood of success is evident. See Springfield Television Broadcasting Corp., 4 R.R.2d 681 (1965) (particular duty upon licensee to offer facilities for reply where it is personally involved in the controversy). See also Pennsylvania Community Antenna Ass'n., 6 R.R.2d 112 (1965). Failure of the Commission to preserve the status quo pending resolution of this issue would effectively deny Petitioners and the general public any remedy whatsoever to the licensee's unreasonable judgment in administration of its fairness obligations.

B. Irreparable Injury To Petitioners And The General Public

Although the likelihood of success on the merits makes a strong showing of irreparable injury unnecessary, Petitioners and the general public would nevertheless be substantially and irreparably injured by a Commission failure to preserve the status quo. For this reason alone a stay should be granted.

With regard to the Fairness Doctrine Complaint contained in the Petition, preservation of the status quo pending resolution is the only means of preserving the public's right to receive access to contrasting views in a timely manner. Thus, a change of format prior to a balanced presentation of contrasting viewpoints to the licensee's editorials on its change of format (clearly a publicly controversial issue in New York City), would present a fait accompli. Failure by the Commission to stay this action would render meaningless any later remedy.

This is a timely subject. It is controversial and involves the licensee's private interests. WNCN has had the obligation to provide presentation of the contrasting viewpoints. Springfield Television, supra. Yet it has refused to provide its audience with an alternative to its editorials on this controversial format change. If licensees are allowed to abuse their discretion in this way, and then

present a fait accompli before the public has the opportunity to pursue legal remedies, the Fairness Doctrine would be meaningless. Only a stay preserving the status quo can assure the public of its First Amendment right to receive suitable access to diverse and contrasting viewpoints on this controversial issue on which WNCN has persistently editorialized to its own monetary benefit.

More generally, the public would be irreparably injured by a change of format prior to Commission hearing in that

(1) the record library, valued by Starr at $750,000 would be dispersed, and reassembled only at extreme expense and effort;

(2) the expert WNCN classical music staff would eventually leave or be dismissed, since it is extremely unlikely that classical music announcers could effectively perform as popular music disc jockeys;

(3) the loyal and ardent audience of WNCN, estimated at 400,000 would be dispersed. This would make a return to classical format at a later date more precarious financially, since much of the audience would leave the station forever and advertising rates would presumably be reduced accordingly;

(4) the New York City service area would lose a unique and important cultural asset, which significantly contributes to its diversity, by loss of the WNCN format for any significant length of time.

It would be impossible to reconstruct the status quo once the station takes its private and unilateral action to remove its format from the New York City market. A stay is clearly warranted on this ground.

C. Injury To Other Parties

While the New York audience would suffer from loss of WNCN's classical format, it is difficult to determine how Starr Broadcasting could be injured by awaiting a Commission and judicial determination as to the legality of its proposed action under the public interest. Petitioners respectfully submit that no significant injury would accrue to Starr if a stay were issued.

In view of the more than $500,000 in pledges from the public, Starr could even operate WNCN noncommercially and not lose money. Petitioners would refer the Commission to the full argument in its Petition relative to the economic viability of the existing WNCN format for further support of its contention that economic losses to Starr are unnecessary.

D. Weight of the Public Interest

Starr seeks to operate its newly acquired license for private gain over the general public interest. It is clear that the public wants and deserves continued classical music service over WNCN. It is also clear that the only reason Starr seeks to change this format is for private commercial gain.

Yet a broadcaster is licensed to serve the public as trustee of the public's airwaves. It cannot place its own desire to maximize profits over the general public interest.

To state the proposition that Starr seeks to remove WNCN's unique classical format in favor of a 41st popular music station in order to "serve" New York is to show its absurdity from a public interest standpoint. And given the outpouring of public financial support to continue the existing format, there can be no argument that the change in format is necessary to keep WNCN on the air.

In sum, the Commission's duty is to regulate in the public interest, convenience and necessity. These standards clearly require the issuance of a stay preserving the status quo on WNCN.

CONCLUSION

WHEREFORE, the WNCN Listeners' Guild respectfully requests the Commission to issue an order, within seven days, requiring Starr Broadcasting Group, licensee of WNCN-FM,

New York City, New York, not to deviate substantially from its present classical music format, not to change its call letters, and in all other ways to preserve the status quo with regard to the facts and issues raised in the Guild's accompanying Petition. The Guild further requests that the stay order remain in effect pending all litigation on the Petition, before the Commission and the federal courts.

Respectfully submitted,

The WNCN Listeners Guild
663 Fifth Avenue
New York City, New York 10022

By Kristin Booth Glen/fe
Kristin Booth Glen
30 E. 42d St.
New York, New York 10017

Frank W. Lloyd

Charles M. Firestone

Of Counsel:
Robert Schack
330 E. 71st St.
New York, New York 10021
(Awaiting admission to Bar)

Citizens Communications Center
1914 Sunderland Place, N.W.
Washington, D.C. 20036
(202) 296-4238

Attorneys for Petitioners

September 23, 1974

A 5

DISTRICT OF COLUMBIA)
) SS.
CITY OF WASHINGTON)

I, Robert J. Schack, being duly deposed do hereby state the following:

1. That I reside at Apt. 2F, 330 E. 71st Street, New York, N.Y. 10021;

2. That I am the president of the WNCN Listeners Guild, an unincorporated New York not-for-profit association, whose address is 663 Fifth Avenue, New York, N.Y. 10022;

3. That I have read the foregoing Motion for Stay in re the Petition for Revocation of License of Starr Broadcasting Group, Inc. to operate Station WNCN-FM, New York, N.Y. or Immediate Submission of Renewal Application, Resolution of Fairness Doctrine Complaint, and Other Relief, filed on behalf of the WNCN Listeners Guild.

4. That the statements contained therein are true based upon my own knowledge except as to matters which are therein stated upon information and belief or otherwise, and as to those matters, I believe them to be true;

5. That I have signed the Petition and this Affidavit as an individual and as agent in a representative capacity for the WNCN Listeners Guild.

A 58

Robert J. Schaefer
(Signature)

Sworn to before me this
20th day of September, 1974.

Mary C. O'Brien
Notary Public

My Commission Expires September 30, 1977

A 59---

CERTIFICATE OF SERVICE

I, Charles M. Firestone, certify that I have this 23rd day of September, 1974, caused to be hand delivered a copy of the foregoing "Motion For Stay", to the following:

Peter Shuebruk
Fly, Shuebruk, Blume & Gaguine
45 Rockefeller Plaza
New York, New York 10020
Counsel for Starr Broadcasting Group
(hand delivery to Washington, D.C. Office
1211 Connecticut Avenue, N.W.
Washington, D. C. 20036)

Samuel Miller
944 Washington Building
Washington, D. C. 20005
Counsel for Classical Radio for Connecticut

Charles M. Firestone

A 60

FLY, SHUEBRUK, BLUME AND GAGUINE

JAMES LAWRENCE FLY
(1968)
PETER SHUEBRUK
JACK R. BLUME
BENITO GAGUINE
JEROME S. BOROS
HERBERT M. SCHULKING
DONALD E. WARD *
HOWARD J. BRAUN *
JAMES A. EDMUNDSON *
STUART A. SHORENSTEIN **
ARTHUR G. HOUSE *

* D. C. BAR ONLY
** N. Y. BAR ONLY

Washington, D. C.
September 27, 1974

45 ROCKEFELLER PLAZA
NEW YORK, NEW YORK 10020
(212) 247-3040

1211 CONNECTICUT AVENUE, N.W.
WASHINGTON, D. C. 20036
(202) 293-1282

Dear Mr. Mullins

Station WNCN-FM would like to respond to a fairness doctrine complaint lodged by Ms. Kristen Booth Glen on behalf of the WNCN Listeners Guild dated September 21, 1974 which we understand has been received by your office. It is our position that the broadcast matter at issue cannot fairly be regarded as having presented only "one side" of a "controversial issue of public importance" and that, therefore, the station is under no obligation to afford a reasonable opportunity for the presentation of "contrasting" views by Ms Glen or anyone else.

As the Commission has stated on numerous occasions, the individual licensee has the initial responsibility of determining whether a broadcast constitutes a discussion of one side of a controversial issue of public importance, and the Commission will review its decision only if it becomes necessary to determine whether the licensee has acted reasonably under all the circumstances. The licensee's judgment in this case should not be overruled. Moreover, there is an obvious requirement that the complainant first specifically define the "issue" that is claimed to be "controversial. This Ms. Glen has not done. Her letter speaks bewilderingly of, first, the "future of Station WNCN;" then the economic viability of "the classical music format;" and finally, retaining "the unique programming which WNCN has previously employed...through the means of a listener-sponsored station." We do not know upon which of these "issues" the WNCN Listeners Guild would like to broadcast its views, or whether it perhaps regards them all as parts of one large all-encompassing issue. We can hardly exercise our own reasonable judgment better than we already have, in the absence of a precise delineation of the issue as seen by the complainant. We can only read Ms. Glen's letter; we cannot read her mind.

Furthermore, the announcements broadcast over the air by WNCN-FM[1]/ (to be distinguished from what may have been discussed in local newspapers and magazines) clearly did not present one side of a controversial issue, even assuming that WNCN-FM's format change may be so characterized. Instead, the announcements simply took note of WNCN's change of format and requested that listeners fond of the classical music format pledge money to sustain the format on a non-commercial station. The merits of WNCN's change of format was not even mentioned, let alone argued during the broadcasts. The focus of the announcements was clearly upon securing pledges to support a classical format on a non-commercial station and not at all upon the merits of management's decision to alter the format of its broadcast station. The Guild has not, in our opinion, sought to discuss the merits of the request for pledges of financial support, which in any event is hardly a controversial matter of public importance.

What may have been discussed or argued in the press about WNCN's change of format is another matter entirely and one to which the Fairness Doctrine in broadcasting has no application. Possibly the Guild might urge that it should be given space in the press to argue its cause, but as broadcasters we did not feel compelled to redress any imbalance that may have occurred in the newspapers and magazines, assuming for purpose of argument that such an imbalance did exist.

The following situations are illustrative of the broad questions which appear to be raised by the complainant:

Does a station which telecasts a controversial play in a football game open itself to Fairness Doctrine requirements?

Is a station which announces on the air that a news program which previously had been broadcast at 6:00 p.m. would be shifted to 6:30 p.m. required to give time to the opponents of the change?

Does a station which has substituted baseball games for the Metropolitan Opera and announced the substitution on the air and asked for donations to enable the Opera to continue on an educational station thereby open itself to giving time to those who oppose the substitution?

1/ The continuity used in the announcements is annexed.

The answer in each case is certainly, "No." A station making a program or format change may arguably not be insulated from the Fairness Doctrine if it undertakes to argue the merits of the change on the air. But certainly a station making such a change is not required to give time to opponents of the change merely because some persons prefer the incumbent format. There is never a change backed unanimously by the community.

In short, it is the position of Station WNCN-FM that the Fairness Doctrine complaint of the Listeners Guild is without merit. Not only has there been no delineation of the issue alleged to have been treated on the air, but even if there were, WNCN-FM's broadcast announcements did not argue one side of an issue so as to invoke the Fairness Doctrine.

Very truly yours

Starr WNCN, Inc.

By
Peter Starr

Mr. Vincent J. Mullins
Secretary
Federal Communications Commission
Washington, D. C. 20554

Copies of this letter are being sent as a courtesy to:

Samuel Miller, Esq.
Counsel for Classical Conn.

Charles M. Firestone, Esq.
Counsel for Citizens Comm. Center

WNCN
104.3 FM

A Starr Group Station

2 West 45th Street New York NY 10036 212/687 6171

A 63

PRESS RELEASE

The following is a transcript of the radio announcement by William F. Buckley, Jr. regarding the change of format of WNCN:

" This is William F. Buckley, Jr. I am the Chairman of the Board of the Starr Broadcasting Group. You will have heard that Station WNCN will no longer broadcast in the format to which we are accustomed, beginning on October 5th.

Between now and then we hope to conclude arrangements that would permit the continuation of the WNCN format, together with its musical director and its announcers, on another channel. That channel would not carry commercial announcements of any sort. We are, at this point, discussing with several New York channels the possibility of turning over our extraordinary collection of records, which we value second only to the unique staff that has made WNCN possible.

What we need from you is an expression of interest, <u>concretely</u>. Would you be willing to make an annual contribution to a non-commercial station that would perform for you what WNCN is now performing. Conceivably, we could even arrange to transfer the call letters,to which we are all accustomed, on over to the new channel.

The officers of Starr and representatives of other stations will begin their meetings on Thursday, September the Fifth. ,If we can have from you an expression of your support by then, that would help.

Write to "SAVE WNCN"; mention the amount of money you would be willing to dona if and when the arrangements go through.....yes, it would be tax deductable. And send your letter to: WNCN, 2 West 45th Street, New York, New York.

Thank you."

A 64

The following is Taped Announcement No. 2 by William F. Buckley, Jr. broadcast on WNCN beginning Tuesday, September 3, 1974:

"This is William F. Buckley, Jr., Chairman of the Board of Starr Broadcasting Group. The response to the 'SAVE WNCN' drive has been electric. If you continue to send in your pledges at the current rate, we'll be over the top by the 15th of September, and the result will be a continuation of the music in the unique blend you've become accustomed to, with this difference: The new WNCN would not carry commercial advertising. The music director, David Dubal, has said that if the drive succeeds, the new WNCN will be the finest music station in the world. My own opinion is that it's that already. Please make out your pledge now. Write to: SAVE WNCN, 2 West 45th Street, New York. The zip code, 10036. Thank you."

A 65

A Starr Group Station

2 West 45th Street New York NY 10036 212/867 6171

AUG. 29, 1974

THIS IS ELISE TOPAZ, A MEMBER OF THE STAFF OF WNCN. WE ARE VERY SAD ABOUT THE IMPENDING FORMAT CHANGE. BEGINNING OCTOBER 5, 1974, WNCN WILL NO LONGER OFFER THE MUSIC TO WHICH WE HAVE BECOME ACCUSTOMED. WITHOUT THE 24 HOUR-A-DAY BROADCAST, IT IS OBVIOUS THAT THE MUSICAL LIFE OF NEW YORK CITY WILL SUFFER A SERIOUS LOSS. WILLIAM F. BUCKLEY, JR., CHAIRMAN OF THE BOARD OF STARR BROADCASTING GROUP, AND INDEED AN APPRECIATIVE LISTENER OF THE STATION, HAS BROADCAST A TAPED STATEMENT SEVERAL TIMES OVER THE LAST FEW DAYS, WHICH GIVES US HOPE THAT WNCN'S SURVIVAL IS STILL POSSIBLE. IN HIS STATEMENT, HE MENTIONS A NEW STATION. THIS NEW STATION WOULD BE NON-COMMERCIAL, AND IN ORDER FOR THIS POSSIBILITY TO EXIST, WE MUST HAVE AN EXPRESSION OF GIGANTIC SUPPORT FROM YOU - OUR AUDIENCE. WE URGE YOU TO WRITE TO "SAVE WNCN," 2 WEST 45TH ST., N.Y., 10036 AND PLEDGE WHAT YOU WOULD BE WILLING TO DONATE ON AN ANNUAL BASIS. PLEASE SEND YOUR LETTERS AS SOON AS POSSIBLE. WE BESEECH YOUR SUPPORT. THAT'S "SAVE WNCN,"....

104.3

A 66

A Starr Group Station

2 West 45th Street New York NY 10036 212/867 6171

SEPT. 8, 1974

THIS IS WILLIAM F. BUCKLEY, JR., THE CHAIRMAN OF THE BOARD OF STARR BROADCASTING. AS YOU KNOW, $100,000.00 HAS BEEN PLEDGED BY A FOUNDATION PROVIDED WE CAN MATCH IT WITH FRESH PLEDGES. WE ARE BEGINNING NEGOTIATIONS TO KEEP WNCN ALIVE, 24 HOURS OF THE MUSIC YOU HAVE BECOME USED TO, ONLY THIS TIME WITHOUT COMMERCIAL INTERRUPTION OF ANY KIND. SO, PLEASE REMEMBER, YOUR PLEDGE HAS DOUBLE THE VALUE FOR THE NEXT $100,000.00. PLEASE WRITE TO "SAVE WNCN," 2 WEST 45TH ST., N.Y., 10036, OR TELEPHONE 242-2200. THERE ARE 10 VOLUNTEERS STANDING BY TO TAKE YOUR CALL. THAT's 242-2200.

A 67

A Starr Group Station

2 West 45th Street New York NY 10036 212/867 6171

SEPT. 8, 1974

THIS IS WILLIAM F. BUCKLEY, JR., CHAIRMAN OF THE BOARD OF STARR BROADCASTING. YOUR INITIAL RESPONSE TO THE DRIVE TO SAVE STATION WNCN HAS MADE US ALL HUGELY OPTIMISTIC THAT NEW YORK'S FINEST FINE MUSIC STATION WILL CONTINUE TO SERVE THE COMMUNITY. THE GOOD NEWS RIGHT NOW IS THAT A FOUNDATION HAS OFFERED TO MATCH UP TO $100,000.00 ANY PLEDGE RECEIVED FROM TODAY UNTIL THE END THE DRIVE. WITH THIS GRANT AND ANOTHER $100,000.00 FROM YOU WILL HAVE MADE IT. WE PROMISE TO KEEP YOU POSTED. MEANWHILE, PLEASE SEND IN YOUR PLEDGE. TELL HOW MUCH YOU WOULD BE WILLING TO GIVE ANNUALLY - YES, IT WILL BE TAX DEDUCTABLE - TO KEEP WNCN ALIVE. SEND YOUR PLEDGE TO "SAVE WNCN," 2 WEST 45th STREET, N.Y. 10036. THANK YOU.

A 68

A Starr Group Station

2 West 45th Street New York NY 10036 212/757 6171

SEPT. 8, 1974

THIS IS DAVID DUBAL, PROGRAM DIRECTOR OF WNCN. THE CAMPAIGN LAUNCHED TO SAVE OUR UNIQUE CLASSICAL FORMAT IS GOING EXTREMELY WELL. HOWEVER, WE NEED PLEDGES FROM ONE AND ALL. OUR MANY FINE VOLUNTEERS ARE STANDING BY WAITING FOR YOUR PLEDGE. WE NEED TO GO OVER THE TOP SOON: SPEED IS OF THE ESSENCE. THIS MUST BE OUR BIG WEEKEND. THE NUMBER TO CALL IS 242-2200, 242-2200. THANK YOU.

104.3(

A Starr Group Station

2 West 45th Street New York NY 10036 212/867 6171

A 69

SEPT. 9, 1974

THIS IS ELISE TOPAZ FOR "SAVE WNCN." THE MUSICAL PROGRAMMING YOU ARE LISTENING TO RIGHT NOW IS AVAILABLE ONLY ON WNCN. THINK ABOUT THAT. THERE IS NO OTHER STATION IN THE UNITED STATES THAT OFFERS THE DEPTH OF PROGRAMMING THAT WNCN BRINGS YOU EVERY DAY, 24 HOURS-A-DAY. IN THE LAST WEEK, 300 PEOPLE HAVE TAKEN 16,000 PLEDGES TO PRESERVE FINE MUSIC IN NEW YORK CITY. THAT'S 16,000 OUT OF AN AUDIENCE OF 400,000. IF YOU ARE LISTENING TO THIS ANNOUNCEMENT AND YOU HAVE NOT CALLED IN YOUR PLEDGE, ALL WE CAN SAY IS, WE NEED YOUR HELP. THERE ARE NO MORE SPONSORS TO PAY OUR WAY; FROM NOW ON IT'S JUST YOU AND US AND THE MUSIC. PLEASE CALL NOW: 212-242-2200 OR WRITE "SAVE WNCN," 2 WEST 45TH STREET, N.Y. 10036. THE PHONE NUMBER AGAIN IS 242-2200. THANK YOU.

A 70

104.3 FM

A Starr Group Station

2 West 45th Street New York NY 10036 212/867 6171

SEPT. 15, 1974

LADIES AND GENTLEMEN, THIS IS WILLIAM F. BUCKLEY, JR., CHAIRMAN OF THE BORAD OF STARR BROADCASTING GROUP. I'M HAPPY TO REPORT THAT THE "SAVE WNCN" APPEAL HAS REACHED ITS GOAL. WE HAVE IN HAND PLEDGES TO SUPPORT THE CONTINUATION OF THE PRESENT FORMAT AMOUNTING TO $500,000.00. ADDITIONALLY, WE HAVE A GRANT OF $100,000.00 THAT CAN BE APPLIED TO THE CAPITAL EXPENSE OF CONVERTING THE NEW CHANNEL FOR USE IN THE WNCN FORMAT. THREE NEW YORK CITY STATIONS HAVE SHOWN AN INTEREST IN ADOPTING THE WNCN FORMAT. EACH OF THEM HAS A DIFFICULTY OF ONE KIND OR ANOTHER. I AM CONFIDENT THAT ONE OF THESE STATIONS WILL IN THE NEXT TWO WEEKS STEP FORWARD TO PERPETUATE THE FORMAT WE ALL REVERE. REMEMBER, IT IS SPECIFIED THAT THE NEW FORMAT WILL EXCLUDE ALL COMMERCIAL MESSAGES.

I HAVE INVITED A COMMITTEE OF NEW YORKERS TO TAKE CHARGE FROM

OF THE BORAD OF STARR BROADCASTING GROUP. I'M HAPPY TO REPORT THAT THE "SAV. WNCN" APPEAL HAS REACHED ITS GOAL. WE HAVE IN HAND PLEDGES TO SUPPORT THE CONTINUATION OF THE PRESENT FORMAT AMOUNTING TO $500,000.00. ADDITIONALLY, WE HAVE A GRANT OF $100,000.00 THAT CAN BE APPLIED TO THE CAPITAL EXPENSE OF CONVERTING THE NEW CHANNEL FOR USE IN THE WNCN FORMAT. THREE NEW YORK CITY STATIONS HAVE SHOWN AN INTEREST IN ADOPTING THE WNCN FORMAT. EACH OF THEM HAS A DIFFICULTY OF ONE KIND OR ANOTHER. I AM CONFIDENT THAT ONE OF THESE STATIONS WILL IN THE NEXT TWO WEEKS STEP FORWARD TO PERPETUATE THE FORMAT WE ALL REVERE. REMEMBER, IT IS SPECIFIED THAT THE NEW FORMAT WILL EXCLUDE ALL COMMERCIAL MESSAGES.

I HAVE INVITED A COMMITTEE OF NEW YORKERS TO TAKE CHARGE FROM THIS POINT ON. THEY ARE RICHARD CLURMAN, PRESIDENT OF THE CITY CENTER; SCHUYLER CHAPIN, GENERAL MANAGER OF THE METROPOLITAN OPERA; DR. FRANK STANTON, PRESIDENT OF THE AMERICAN PED CROSS, AND FORMER PRESIDENT OF CBS; DAVID OPPENHEIM, DEAN OF NEW YORK UNIVERSITY AND FORMER MUSIC CONSULTANT FOR RCA; DIXON PALMER, REPRESENTING THE MERLIN FOUNDATION; AND THEODORE SORENSEN, THE DISTINGUISHED ATTORNEY. ALL OF THESE GENTLEMEN HAVE AGREED TO SERVE. THIS COMMITTEE WILL PRESIDE OVER THE NEGOTIATIONS. IT WILL MEET FOR THE FIRST TIME ON TUESDAY, SEPT. 17. AS THE NEWS DEVELOPS, IT WILL BE PASSED ALONG TO YOU BY THE CHAIRMAN OF THE COMMITTEE, WHO WILL BE ELECTED AT THE FIRST MEETING. MEANWHILE, I JOIN WITH THE STAFF OF WNCN IN CONGRATULATING YOU ON WHAT YOU HAVE DONE. THANK YOU.

A 72

A Starr Group Station

2 West 45th Street New York NY 10036 212/867 6171

SEPT. 18, 1974

THIS IS ELISE TOPAZ WITH THE LATEST REPORT ON THE SAVE WNCN CAMPAIGN. ON SEPT. 17, THE COMMITTEE TO SAVE WNCN MET FOR THE FIRST TIME. RICHARD CLURMAN, PRESIDENT OF CITY CENTER, WAS ELECTED AS ACTING COMMITTEE CHAIRMAN. THE PROCEDURE FOR THE TRANSFERENCE OF THE WNCN ASSETS TO ANOTHER STATION WERE DISCUSSED. AS FAR AS THE NEGOTIATIONS WITH STATIONS WBAI, WNYC, AND WFUV ARE CONCERNED, THERE HAVE BEEN NO FORMAL PROPOSALS TO THIS DATE. WE WILL KEEP YOU INFORMED AS TO FUTURE DETAILS. THE MEMBERS OF THE COMMITTEE TO SAVE WNCN ARE RICHARD CLURMAN, SCHUYLER CHAPIN, DR. FRANK STATNTON, DAVID OPPENHEIM, THEODORE SORENSEN, DIXON PALMER, ROSALYN TURECK, AND WILLIAM F. BUCKLEY, JR.

FOR RESPONSIVE MEDIA:
CITIZENS COMMUNICATIONS CENTER
1914 SUNDERLAND PL., N.W., WASHINGTON, D.C., 20036 (202) 296-4238

September 30, 1974 A - 73

Vincent J. Mullins, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D. C. 20554

RE: Fairness Complaint of WNCN Listeners' Guild Against Station WNCN-FM, New York, New York

Dear Mr. Mullins,

This is in reply to Peter Starr's letter of September 27, 1974 representing the position of Starr WNCN, Inc. to the Commission in the matter of the fairness doctrine complaint raised against WNCN-FM by the WNCN Listeners' Guild.

In his letter, Mr. Starr asserts that he cannot find any controversial issue of public importance in the almost hourly editorials by the station calling for financial pledges to the "Save WNCN" campaign. Mr. Starr then states that even if "WNCN-FM's format change" may be characterized as a controversial issue, the station's editorials did not constitute one side of such an issue.

The WNCN Listeners' Guild hereby responds to Mr. Starr's statements. We respectfully submit that they leave no doubt but that Starr WNCN has abused its discretion under the fairness doctrine, and has done so in bad faith.

I. Procedural Matters

Before detailing our substantive response, however, the Guild would first like to clarify a couple of procedural matters.

(A) Mr. Starr states in his letter that he is responding to the "fairness doctrine complaint lodged by Ms. Kristin Booth Glen on behalf of the WNCN Listeners' Guild dated September 21, 1974..." So that there is no misunderstanding, the WNCN Listeners Guild has presented its

fairness complaint to the station and the Commission in various other documents besides the letter to which we believe Mr. Starr refers. Accordingly, we attach as Exhibit A to this letter the following:

(1) Copy of telegram dated September 10, 1974 from Matthew C. Edwards, spokesman of the WNCN Listeners Guild to Roger Starr, President of Starr Broadcasting. (This is reprinted as Exhibit B to the Affidavit of Kristin Booth Glen, which in turn was attached as Exhibit J5 to the WNCN Listeners Guild Petition for Revocation, Etc.* filed with the Commission on September 23, 1973.)

(2) Affidavit of Kristin Booth Glen dated September 18, 1974, and attached to the Guild's Petition as Exhibit J5.

(3) Letter dated September 12, 1974 from Ms. Kristin Booth Glen, counsel for WNCN Listeners' Guild, to Mr. Paul Wachsmith, WNCN Station Manager. (This is Exhibit A to Ms. Glen's Affidavit in (2) above, and is the letter to which we believe Mr. Starr refers in the opening sentence of his September 27 letter to the Commission. We believe Mr. Starr mistakenly related the date of Ms. Glen's letter as September 21, 1974 instead of September 12, 1974.)

(4) Affidavit of Robert J. Schack dated September 15, 1974 and attached to the Petition as Exhibit J13.

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* The "Petition for Revocation of License of Starr Broadcasting Group, Inc. to Operate State WNCN-FM, New York, New York, or Immediate Submission of Renewal Application and Resolution of Fairness Doctrine Complaint and Other Relief" is hereinafter referred to as "Petition."

(5) Letter dated September 15, 1974 from Paul Wachsmith of WNCN to Mr. Matthew Edwards. (This letter was logged at the Commission's Complaints and Compliance Division on September 26, 1974 as C9-1567.)

(6) Letter dated September 19, 1974 from Matthew Edwards to William B. Ray of the FCC. (This was logged by the Complaints and Compliance Division on September 24, 1974 as C9-1563.)

We would also refer the Commission to the Petition of the WNCN Listeners Guild, particularly pp. 49-52 and Exhibits referred to therein, and the Guild's Motion for Stay, also filed on September 23, 1974, particularly pp. 11-14. With the possible exception of (6) above, WNCN has received all of the above items which relate to the fairness doctrine abuse question.* We believe these documents comprise the fairness record before the Commission. Nevertheless we will concentrate in this letter on Mr. Starr's belated response solely to Ms. Glen's September 12 letter.

(b) A second procedural issue which needs to be clarified is the form of Starr WNCN, Inc.'s response to the fairness doctrine question. Mr. Starr has submitted an unsworn, unverified letter to the Commission on the stationery of his counsel, Fly, Shubruk, Blume and Gaguine of Washington, D.C.

This does not appear to conform strictly to the Commission's Rules for subscription and verification of pleadings as set forth in 47 CFR §1.52 (1973).** Nevertheless,

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* Starr's counsel was notified of the filing of Item 6.

** Section 1.52 provides in part:

> The original of all petitions, motions, pleadings, briefs, and other documents filed by any party represented by counsel, shall be signed by at least one attorney of record in his individual name, whose address shall be stated . . . A party who is not represented by an attorney shall sign and verify the document and state his address.

in reliance on Mr. Starr's representations and assuming that Mr. Starr has implicitly verified the accuracy and completeness of the editorialis attached to his letter, the Guild will answer the letter as if it conformed to Section 1.52.

On the other hand, if the Commission were not to view Mr. Starr's letter is verified, then the Guild respectfully requests that it be struck from the files and returned. We raise this matter because if we should later find that the editorials or representations submitted therein are lacking candor, incomplete and/or intended to mislead the Commission, we would expect denial of WNCN's renewal application for the next license term. See Milton Broadcasting Co., 34 F.C.C.2d 1036 (1972), aff'd D.C. Cir. No. 72-1583 (January 30, 1973). We note for example, that they do not conform to the texts and dates included in Exhibits K1-K18 of the Guild's Petition (WNCN editorials monitored by the Guild).

II. Substantive Response

With these procedural matters aired, the Guild now turns to the substantive merits of Mr. Starr's letter of response. The Guild respectfully submits that Starr WNCN's steadfast refusal to air contrasting viewpoints to those aired in its series of editorials regarding its own proposed change of format is unreasonable, an abuse of license discretion and made in bad faith. It is totally inconsistent with a licensee's fiduciary duty to its service area as trustee of the public's airwaves. And, if sustained, Starr WNCN would render the Fairness Doctrine meaningless -- in the area where licensees have the highest duty of fairness: where the licensee itself has a personal or financial interest in or is the subject of a controversial issue of public importance. E.g. Springfield Television Broadcasting Corp., 4 R.R.2d 681, 685, ¶9 (1965) and cases cited therein.

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* To the Guild's knowledge and belief, the "Save WNCN" announcements have been logged as editorials. See Affidavit of Robert Schack, Petition, Exh. J13, attached hereto as Exhibit A-4. The Guild respectfully suggests that the Commission immediately call for WNCN's logs for August-September, 1974.

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(A) The controversial issue of public importance.

While on page one of his letter Mr. Starr cannot find a controversial issue of public importance in the station's "Save WNCN" editorials,* page two demonstrates the specious nature of that claim. In the second page Mr. Starr states that WNCN-FM's announcements ". . . clearly did not present one side of a controversial issue, even assuming that WNCN-FM's format change may be so characterized."

That WNCN-FM's format change is a controversial issue of public importance is clearly demonstrated by the spontaneous and voluminous public reaction to WNCN's announcement of its format plans. In one week, due to the urgings of Starr WNCN's own chairman of the board, William F. Buckley, Jr., 16,000 people pledged money in order to preserve the present format. (WNCN Announcement of September 9, 1974.*) We believe the figure now exceeds 20,000 people, contributing pledges of over $500,000.**

The controversy is also clearly of public importance as demonstrated by the extreme press coverage given to the matter. Exhibit C to the Petition, and Exhibit D to the Guild's September 27 "Objection and Protest" to Starr's application to change call signs are collections of news and magazine articles on the format change. They include news-feature articles from [MORE], the New York Times, the Daily News, Sunday News, Broadcasting, Variety, the Village Voice, the Long-Island Press, Cue, New York Magazine, and the New York Post.*** The Times alone has carried at least nine articles involving the format change since Starr's announcement in late August.

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* Attached to Peter Starr's letter of September 27, 1974 to the Commission.

** See WNCN Announcement of September 15, 1974. Id.

***Contrary to Mr. Starr's intimations in his letter, the Commission can and should take into account what is happening in the press as it relates to a fairness doctrine question. See National Broadcasting Co. v. FCC, D.C. Cir. No. 73-2256. (Slip Op. September 27, 1974) at pp. 45-48 (Commission should have considered printed reviews of "Pensions" in determining reasonableness of NBC's characterization of the subject of the program.)

Moreover, the Commission has already received approximately 300 letters of protest, despite the smoke-screen raised by WNCN's sweetheart citizen group efforts with "Save WNCN" diverting such protest. The Guild has received over 1200 more individual letters and will forward them to the Commission as soon as possible. The Commission also has a significant number of petition signatures protesting the change. In addition to the 300 signatures delivered directly to the Commission, the Guild has attached over 900 signatures in its filings of September 23 and 27, and attach an additional 1027 names herewith. These 4000 protesters -- even before petitions in response to the Guild's advertisement in the September 27 New York Times can be forwarded -- clearly demonstate the controversial and important nature of the format change issue. Coupled with the press coverage, the matter is indisputable.*

The United States Court of Appeals for the District of Columbia Circuit, furthermore, has clearly recognized that changes of broadcast formats can be raised to a "public interest level," Citizens Committee to Keep Progressive Rock v. FCC, 478 F.2d 926, 928-929 (D.C. Cir. 1973), and that "the degree of support for retention of a unique format can be of critical importance in what otherwise are 'close cases'." Ibid. at n.7. Certainly, then, the degree of reaction to WNCN's announcement should be strongly considered in any determination of the station's reasonableness in handling the fairness doctrine question. A fortiori it should be considered by the station in determining whether a given issue is a controversial issue of public importance.

Also of critical importance is the fact that the station is personally involved in the controversy. Thus, where a television station editorialized on CATV in its service area, the Commission held that it acted unreasonably in failing to provide contrasting viewpoints:

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*A recent article in Newsweek Magazine was not included. It is attached herewith as Exhibit B, along with the New York Times editorial of September 28, 1974, uring FCC hearings, and other recent articles.

> [W]e have made clear that broadcast stations must "be maintained as a medium of free speech for the general public as a whole rather than as an outlet for the purely personal interests of the licensee" (Editorializing Report, 13 FCC at 1248), and that, therefore where a licensee has made a good faith judgment that it should present its viewpoint on a matter in which it is personally involved, the licensee has a particular duty to insure that the requirements of fairness are satisfied. See Letter to Emerson Stone, Jr. FCC 64-363 (1964); WSOC Broadcasting Co., 17 Pike & Fischer RR 548 (1958).
>
> Springfield Television Broadcasting Corp., supra 47 R.R.2d at 685. See also Pennsylvania Community Antenna Ass'n, 6 R.R.2d 112, 115, (1965). (Issue of "CATV and its development in the Scranton-Wilkes-Barre area".)

Thus, the fact that WNCN is in fact personally involved in the controversy over its proposed change of format necessarily colors the Commission's review of the licensee's reasonableness and good faith in discharging its fairness doctrine obligations.

This case, then, is decidedly different from NBC v. FCC, supra, D.C. Cir. No. 73-2256 (Pensions). In Pensions the court of appeals held that the Commission erred in failing to accord proper leeway and deference to the licensee's characterization of the controversial issue of public importance. While even under the Pensions standard, the Commission cannot reasonably find that WNCN has reasonably and in good faith exercised its discretion under the fairness doctrine, this case is at the other end of the spectrum. WNCN's editorials were not evidence of a licensee performing its legitimate journalistic role in an investigative documentary, but rather a licensee propagandizing its own solution to a problem in which it has a personal and financial stake.

In investigative journalism efforts, doubts should be resolved in the licensee's favor. NBC v. FCC, supra. Where a licensee has a personal interest, on the other hand, doubts must be resolved in favor of the public's right to hear contrasting viewpoints. Springfield Television, supra. If the fairness doctrine is to have any life or breath at all, Starr's judgment must be reversed as unreasonable and in bad faith.

(B) The Guild's Characterization of the Issue.

It is clear from all correspondence and complaints made by the WNCN Listeners' Guild that the controversial issue of public importance to which it was referring was WNCN's change of format.

In Matthew Edward's telegram to Roger Starr of September 10, he referred to WNCN's almost hourly editorials "presenting Starr Broadcasting's position on the public matter of WNCN programming." (Exhibit A-1.)

In Kristin Booth Glen's Affidavit of September 18, she referred to "WNCN's format" as the issue requiring fairness doctrine application. (Exhibit A-2.)

In Ms. Glen's letter of September 12 to Paul Wachsmith, WNCN's General Manager, she referred to the issue of the "future of Station WNCN." She also stated the one side which the Guild submits has been presented in WNCN's editorials, "i.e., that the classical music format is not economically viable for a commercial station and that the only way to retain the unique programming which WNCN has previously employed is through the means of a listener-sponsored station." (Exhibit A-3.)

And in Matthew Edward's letter of September 19 to William B. Ray, he states that, "The change of format has become a matter of great concern to WNCN listeners in the tri-state area..." (Exhibit A-6.)

There is no reasonable way that WNCN could fail to understand what the controversy is. Mr. Starr's attempts to avoid the question by claiming ignorance of the issue is clearly an indication of bad faith. The stations written response to Mr. Edwards of September 18 (Exhibit A-5), denying his fairness request without explanation is an indication of whim, arbitrariness, and unreasonableness.*

(C) WNCN's Presentation of One Side of The Controversial Issue.

Mr. Starr's disclaimer regarding WNCN's presentation of one side of the controversy over the station's change of

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*In her Affidavit (Exhibit A-3), Ms. Glen details the extremes she had to go through simply to obtain a response by the station to the Guild's requests.

format is, like his denial of the controversy itself, unreasonable. Again, the licensee's self interest in the issue has colored its exercise of its public trustee function as Commission licensee.

Mr. Starr admits, as he must, that the WNCN announcements ". . . took note of WNCN's change of format and requested that listeners fond of the classical music format pledge money to sustain the format on a non-commercial station." (Starr Letter, p. 2.) By focusing on securing pledges to support a noncommercial format, rather than on the merits of WNCN's change of format directly, Mr. Starr claims that WNCN has therefore avoided discussion over the station of the controversial issue of WNCN's change of format. As he concludes, at p.3:

> A station making a program or format change may arguably not be insulated from the Fairness Doctrine if it undertakes to argue the merits of the change on the air. But certainly a station making such a change is not required to give time to opponents of the change merely because some persons prefer the incumbent format. There is never a change backed unanimously by the community.

This argument fails for two reasons. First, it is not totally accurate. And, second, in the facts of this case, the WNCN approach, i.e., to transfer the WNCN format intact to a noncommercial station, is one side of the controversy over WNCN's change of format.

(1) Content of WNCN's Announcements.

From the first announcement, attached to Mr. Starr's letter, William F. Buckley, Jr. raised the issue of the proposed change in WNCN's format. In that context, he proceeded to delineate how to "permit the continuation of the WNCN format. . ." In the September 3 announcement, Mr. Buckley stated that if pledges continued at the current rate, ". . . the result will be a continuation of the music in the unique blend you've become accustomed to . . ." except that it would be without commercials.

On August 29, WNCN staff member Elise Topaz stated that "without the 24 hour-a-day broadcast [of WNCN], it is obvious that the musical life of New York City will suffer a serious loss."* She then referred to Mr. Buckley's announcements as giving "hope that WNCN's survival is still possible."

On September 8, Mr. Buckley again referred to "negotiations to keep WNCN alive, 24 hours of the music you have become used to, only this time without commercial interruption of any kind."

On September 8, Mr. Buckley stated that WNCN listener pledges ". . . has made us all hugely optimistic that New York's finest fine music station will continue to serve the community." That same day, Program Director David Dubal spoke of "the campaign launched to save our unique classical format."

On September 9, Ms. Topaz stated:

> This is Elise Topaz for "Save WNCN." The musical programming you are listening to right now is available only on WNCN. Think about that. There is no other station in the United States that offers the depth of programming that WNCN brings you every day, 24 hours-a-day.

On September 15, Mr. Buckley announced that the "Save WNCN" appeal had reached its goal, and expressed confidence that one of three noncommercial stations ". . .will in the next two weeks step forward to perpetuate the format we all revere."

These are the statements which Mr. Starr included in attachments to his own letter. They demonstrate that the WNCN announcements soliciting listener pledges put forth one plan only: the continuation of the WNCN format without commercial interruption. Again and again the licensee referred to the hopes and desires of continuing WNCN's unique 24 hour-a-day offerings through this means.

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*This statement, on behalf of Starr WNCN, alone proves that Starr has recognized from the beginning that the issue of WNCN's change of format is a controversial issue of public importance to its community of license.

The "Save WNCN" plan, then, was one method of continuing the unique WNCN format in New York. There is no question about this, except to the extent it might have been a diversionary tactic to minimize citizen protest of the format change at the FCC. But certainly the licensee was addressing itself throughout these broadcasts to the general issue of WNCN's change of its admittedly unique format. Its own references and exhibits alone verify this.

But there is also the very serious omission of many announcements in Mr. Starr's unsworn and unverified letter.* The Guild submitted transcriptions of a sampling of 18 WNCN announcements in Exhibit K to its Petition. The accuracy of these transcriptions can be verified by comparing the only one which both the Guild and WNCN submitted: that of Elise Topaz at Petition, Exhibit K11, and in Mr. Starr's letter, the seventh attachment, dated September 9, 1974. The times and dates can be verified by the Commission by calling for WNCN's logs from September 1 to September 15.

Mr. Starr's omissions are critical. For the Guild's transcriptions show that the station aired other announcements which more directly present WNCN's plan to save its own format as a viewpoint on the overall format change issue. For example, Exhibit K1 is a transcription of an editorial by David Dubal on September 5 at or about 9:50 p.m. In it he states,

> We would appreciate any and all pledges to help make WNCN a continuing force in New York music, to maintain it as a fulltime classical music station in New York City and that can only be done if it becomes a listener supported, non-commercial station because this frequency is being taken October 5th by another format, a different kind of music. If you like classical music, if you like WNCN, and you feel its worth it to you, to support it by financial contribution . . . then call right now. . .

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*At page 2, note 1 of his letter, Mr. Starr states unqualifiedly that "The continuity used in the announcements [broadcast over the air by WNCN-FM] is annexed." The Guild's copy of the pleading contained only nine announcements.

> We've got to see how broad the base of support is for WNCN. If there's enough support to justify, the station will continue. If not, it won't; it's as simple as that, as of October 5th.

We will not detail here all of the transctiptions in Exhibit K to the Petition. The point is that Mr. Starr has not supplied the Commission a full and complete account of WNCN's announcements relating to the change of format. Nor has he explained that his attachments are but a few of the announcements aired on the subject. Instead, he has represented in a letter,upon which he no doubt expects the Commission to rely, that WNCN did not even mention the merits of WNCN's change of format.*

In sum, a simple perusal of the Starr letter attachments, and the fact that he has apparently concealed other, more pertinent announcements, raise serious questions as to the accuracy of Mr. Starr's characterization of WNCN's position on the format change issue. They clearly demonstrate that the "Save WNCN" campaign was, in context, one side of the controversy over the issue of WNCN's change of format.

(2) "Save WNCN" Is One Side of The Controversy Over WNCN's Change of Format.

In its Fairness Report, 39 Fed. Reg. 26372 (1974), app'l pending sub nom., National Citizens Committee for Broadcasting v. FCC, D.C. Cir. No. 74-1700, the Commission considers the problem of determining specific issues raisd in a program. It stated that "a broadcast may avoid explicit mention of the ultimate matter in controversy and focus instead on assertions or arguments which support one side or the other on that ultimate issue." Id. at ¶33.

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*We would observe at this point not only that Mr. Starr's statements lack the candor the Commission expects from its licensees, but also that in a similar circumstance the Commission denied renewal of a license, based on circumstantial evidence that the licensee falsified an editorial in responding to a Commission fairness inquiry. Milton Broadcasting Co., supra.

The Commission's hypothetical example is where a spokesman asserts two principal arguments for passage of a school bond issue (need for construction and need for substantial increase in teachers' salaries), but does not explicitly mention or advocate passage of the bond issue. Ibid.

The Commission then states that it ". . . would expect a licensee to exercise his good faith judgment as to whether the spokesman had in an obvious and meaningful fashion presented a position on the ultimate controversial issue. . ." Ibid.

It continues, that the licensee's inquiry should focus on whether the statement, in the context of the ongoing community debate, is "so obviously and substantially related" to the ultimate issue as to amount to advocacy of a position on that question. If the licensee's determination is reasonable, and arrived at in good faith, the Commission will not upset it. Ibid.

Under this approach, WNCN's determination must be ruled unreasonable and in bad faith. Reasonably, no licensee could dispute that the "Save WNCN" campaign was one way to continue the unique WNCN format, but clearly not the only way. The Guild and Classical Radio for Connecticut have acted in another way -- one that has worked in some form in several other cities: Chicago, Atlanta, Syracuse, Sylvania, Ohio, and Cambridge, Massachusetts.

For the licensee to deny that its way is not the only way is unreasonable. For it to fail to see the ultimate issue, or that its constant editorials spoke to that issue -- on a matter in which it was personally and financially involved -- is bad faith.

Clearly, then, WNCN's refusal to provide for the presentation of contrasting viewpoints on the way to preserve the unique format of WNCN, the central controversy involved in the station's proposed change of format, is unreasonable and made in bad faith.* The Commission must reverse the licensee's determination.

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*In this regard, we would also draw the Commission's attention to the allegations in Robert Schack's affidavit (Petition, Exh. J13, attached as Exhibit A-4 hereto) that (1) the licensee has purposely failed to place listeners' letters relating to Save WNCN in its public file, and (2) that the announcements were logged as editorials. Accordingly, Starr knew it was presenting one viewpoint on a controversial issue of public importance. 47 CFR §73.112(d)(1) Note 1(i)(1973).

(D) Affirmative Obligation to Cover Issue Under the Fairness Doctrine.

Assuming arguendo that WNCN had not aired one side of the controversial issue of public importance relating to the station's change of format, the licensee would have violated its affirmative obligation under the fairness doctrine to cover controversial issues initially. This obligation is clear, and is set forth in Section 315 of the Communications Act, 47 U.S.C. §315; Red Lion Broadcasting Corp. v. FCC, 395 U.S. 367, 377 (1969); NBC v. FCC (Pensions), supra, Slip Op. at 11; Fairness Report, supra, at ¶24; Editorializing by Broadcast Licensees, 13 F.C.C. 1246, 1249 (1949).

A licensee "is prohibited from 'excluding partisan voices and always itself presenting views in a bland inoffensive manner'... A broadcaster neglects that obligation only at the risk of losing his license." Fairness Report, supra, at ¶81, quoting CBS v. DNC, 412 U.S. 94, 131 (1973).

We have already demonstrated that the WNCN change of format is of great public concern and controversy. It is of greatest concern to the WNCN audience. Over 20,000 people (of a total audience of 400,000) have actually pledged money in a period of weeks to keep the format going.

Thus, WNCN would have a special obligation to inform its audience of the various "partisan" sides to this hot issue. Unless it can demonstrate a practice of airing many other controversies of importance to its service area, or airing the various sides to this change of format controversy, WNCN has violated the first and basic tenet of the fairness doctrine. Accordingly, if Mr. Starr's statements were true regarding the station's failure to air any partisan sides to the format controversy, WNCN should be required either to begin airing such controversial programming or lose its license.

III. Remedy

While Mr. Starr did not address this point, the Guild would respectfully request that it, or other responsible spokespeople representing its position, be afforded free spot messages roughly equal to the almost hourly editorials aired by WNCN on its proposed change of format over the past month.

In order for this remedy to have effect, furthermore, the Guild submits that the Commission issue an order preserving the status quo on WNCN's format, since the operative facts and decisions in the ultimate controversy are within the licensee's control. Finally, the Guild refers the Commission to its Motion for Stay, filed September 23, 1974, and requests Commission action by 3:00 p.m. Tuesday, October 1, in order that it may timely seek and obtain judicial review. We would be glad to appear for oral argument before the Commission if that is deemed necessary or helpful.

Respectfully submitted,

WNCN Listeners' Guild

By Kristin Booth Glen cc

Kristin Booth Glen
30 E. 42d Street
New York, New York 10017

Frank W. Lloyd

Charles M. Firestone

Citizens Communications Center
1914 Sunderland Place, N.W.
Washington, D. C. 20036

Of Counsel:
Shelley Higgins
Jody Daniels
Student Interns
Citizens Communications Center

cc: Peter Starr
c/o Fly, Shubruk, Blume & Gaguine

Milton Gross
All Commissioners
Ashton Hardy, General Counsel

A 88

MGM=SHT WSA
2=01033ZE25= 09/10
ICS IPMTZZ CSP
2037=27018 MGM TDMT WILTON CT 134 09=10 0904A EDT
ZIP 20036

Exhibit A - 1

FRANK LLOYD
CITIZEN COMMUNICATION CTR, 1914 SUNDERLAND PL NORTHWEST
WASHINGTON DC 20036

(THIS IS COPY OF TELEGRAM SENT TO ROGER STARR, PRESIDENT, STARR BROADCASTING CO, 2 WEST 45 ST, NEW YORK NY 10036)

GENTLEMEN FOR THE PAST TWO WEEKS I HAVE HEARD EDITORIAL PRONOUNCEMENTS BY MS WILLIAM BUCKLEY JR, MS ELISE TOPAZ, AND OTHERS AT A FREQUANCY APPROACHING 1 PER HOUR, PRESENTING STARR BROADCASTING'S POSITION ON THE PUBLIC MATTER OF WNCN PROGRAMING. AS SPOKESMAN FOR THE ORGAIZATIO N KNOWN AS THE WNCN LISTENERS GUILD, I HEREBY REQUEST AN OPPORTUNITY TO REPLY TO THOSE EDITIORIAL STATEMENTS.
A REPLY MAY BE ADDRESSED TO ME AT MY HOME AT 51 OLD HIGHWAY WILTON CT 06897 OR (AFTER FRIDAY) TO THE WNCN LISTENERS GUILD AT 663 5 AVENUE NEW YORK CITY 10022. CORDIALLY,
MATTHEW C EDWARDS

09:04 EDT

MGM=SHT WSA

FEDERAL COMMUNICATIONS COMMISSION
OF THE UNITED STATES

A 89

IN THE MATTER OF THE PETITION OF

THE WNCN LISTENERS' GUILD

TO REVOKE THE LICENSE OF

STARR BROADCASTING GROUP, INC.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

KRISTIN BOOTH GLEN, being duly sworn, deposes and says:

I am an attorney, admitted to the practice of law before the Bar of the State of New York, and I represent the petitioners, the WNCN Listeners' Guild.

On information and belief, on Tuesday, 10 September 1974, Mr. Matthew C. Edwards, on behalf of the WNCN Listeners' Guild and after consulting with me, sent a telegram requesting an opportunity under the fairness doctrine to present a contrasting viewpoint to the editorialized announcements being made on WNCN by Mr. William Buckley Jr., Chairman of the Starr Broadcasting Group, Inc., and his staff regarding WNCN's format. The telegram was sent to Mr. Paul Wachsmith, General Manager of WNCN, at the station and copies were sent to Mr. Buckley and to the Commission.

On Thursday, 12 September 1974, when no response had been forthcoming, I sent a letter on my legal letterhead restating the WNCN Listeners' Guild's request and giving reasons that it should be granted. The letter was sent to Mr. Wachsmith with copies to Mr. Buckley and the Commission. The copy to Mr. Wachsmith was hand delivered to WNCN at 2 West 45th Street, New York, N.Y., and was signed for by a duly authorized employee of Starr WNCN, Inc. An exact carbon copy of the letter is appended here as Exhibit "A."

A 90 On Friday, 13 September 1974, still having received no response, I called the station several times and was told that no management personnel were present. At or about 5:30 p.m. that day I reached Mr. Wachsmith at the station, who told me that in his opinion and that of Mr. Buckley the WNCN Listeners' Guild did not have the right to present opposing viewpoints, but that he would speak to the station's lawyers on Monday. I informed him that if I did not hear from his lawyers by that date, I would proceed to file a fairness complaint with the Commission.

Once again I received no response.

On Tuesday, 17 September 1974, on information and belief, Mr. Edwards called Starr WNCN's lawyers, Fly, Shuebruk, Blume & Gaguine, 45 Rockefeller Plaza, New York, N.Y., to ask for a response. He called repeatedly and to no avail until he stated that he was going to go to the Commission immediately. At this point he was at once put in touch with Peter Shuebruk, a senior partner in the law firm, who told him that the Guild's request was denied and that a letter would be composed in due course.

No reasons for the denial have ever been given.

The WNCN Listeners' Guild continues to assert that it possesses a legitimate and conflicting viewpoint on the matter of serious public interest to which Mr. Buckley and his staff have addressed themselves in broadcast editorials on a virtually hourly basis over the past three weeks.

Kristin Booth Glen

Kristin Booth Glen, Esq.

Sworn to before me this
18th day of September, 1974

Jeffrey C. Glen
Notary Public, State of N.Y.
No. 31-1455285
Qualified in N.Y. County. Commission expires March 30, 1975

Exhibit A -3

A 91

September 12, 1974

Mr. Paul Wachsmith
Station Manager, WNCN
2 West 45th Street
New York, N.Y.10036

Dear Mr. Wachsmith:

I am writing on behalf of my client, The WNCN Listeners Guild, with regard to the telegram sent to your station on Tuesday, September 10th, by Mr. Pott Edwards on the organization's behalf. As Mr. Edwards has received no reply to date, I can only assume that the telegram was lost in the general flood of mail, which I am sure you are receiving. I would like, however, to call your attention to this most urgent matter and to elicit your immediate response.

Over the past two weeks, on a virtually hourly basis, Mr. William Buckley and various members of WNCN's staff, have been presenting taped editorial announcements with regard to the future of Station WNCN. Obviously, this issue is of the utmost importance to the station's listeners and to the public of this city as well. These announcements present only one side of the issue, i.e., that the classical music format is not economically viable for a commercial station and that the only way to retain the unique programming which WNCN has previously employed is through the means of a listener-sponsored station. No consideration whatsoever has been given to other alternatives, none of which, of course, might seem in the short term to be detrimental to the ownership of the station, but certainly to the public's good.

There has been no indication that WNCN has afforded or plans to afford an opportunity for presentation of contrasting views by any persons. The WNCN Listeners Guild is composed of many members of WNCN's listening public who take a strong interest in the future of classical music on the present broadcast band. This organization is ready and willing to provide a responsible spokesperson for views which contrast either substantially with the editorial position the station has heretofore taken.

A 92

Under the general fairness doctrine, it seems clear that the listeners guild should be permitted time to state its position. Since failure to abide by the fairness doctrine would normally affect the likelihood of license renewal in 1975, I can only assume that your failure to respond to this entirely legitimate request has been an oversight which will be promptly rectified.

Please let me hear from you at your earliest possible convenience.

Very truly yours,

KRISTIN BOOTH GLEN

KBG:bb
By H.A.D.

cc: Mr. William Buckley, Jr.
Chairman, Starr Broadcasting Corp.

Citizens Communication Center
1914 Sunderland Place N.W.
Washington, D.C.20036

Federal Communication Commission
Complaint Division
1919 M Street N.W.
Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OF THE UNITED STATES

Exhibit A - 4

A 93

IN THE MATTER OF THE PETITION OF

THE WNCN LISTENERS' GUILD

TO REVOKE THE LICENSE OF

STARR BROADCASTING GROUP, INC.

---x

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

ROBERT J. SCHACK, being duly sworn, deposes and says:

I am an atorney, awaiting admission to the Bar in the State of New York. I received a B.A. from Haverford College, Haverford, Pa., majoring in Economics, and as part of my studies took courses in business accounting.

On 12 September 1974 I examined the Public Information Files of the Securities and Exchange Commission, retained in Room 1100 at 26 Federal Plaza, New York City, for all relevant information on the finances of WNCN and the Starr Broadcasting Group, Inc.

My survey of the information filed with the SEC by Starr showed that Starr acquired WNCN in May, 1973, in exchange for $1,000,000 in cash and $1,000,000 on a five year note, 8% interest, to the seller payable in twenty equal quarterly installments of $42,610.61 beginning July 1, 1973, and a final installment of $443,848.99 on April 30, 1978. The note was secured by the assets of Starr WNCN, Inc., a stbsidiary of Starr Broadcasting Group, Inc., and by all of said subsidiary's outstanding stock.

Investigation further showed that Starr WNCN, Inc. was later incumbered with a $40,000 debt on an 8% unsecured note, payable in 19 quarterly installments of $1905 beginning August 1, 1973, and one final installment of $19,334 payable

May 1, 1978. Despite an intensive search I could no where find Starr's explanation to the public or the SEC of the purpose of this additional debt.

The financial performance of WNCN could not be directly deduced from the consolidated data supplied by Starr to the SEC, and the absence of directly comparable forms for the appropriate periods from the files, made a direct estimate of the change in profits of Starr during the months after it acquired WNCN extremely difficult. Further, since Starr's other subsidiaries were many of them expanding during this period the estimated surge in profits may have nothing to do with WNCN(for the Group Net Income after Income Taxes for the nine months ended March 31, 1974, was $1,223,477 on sales of $15,805,999 which projects by my calculations to Profit after Taxes of $1,861,700 for the year ending June 30, 1974 as compared to Net Earnings after Taxes of $1,435,506 for the year ending June.30, 1973). But it is clear that the Starr Group remains financially viable and would not be severely damaged by anything less than the complete destruction of WNCN and its equipment.

I also noted that in the five year period ended June 30, 1973, Starr twice sold radio stations, each year at a profit after taxes, earning $14,719 in 70/71 and $311,047 in 71/72, without considering the prior favorable tax consequences to the Group as a whole of having those stations operate at a loss.

In sum, because of the incomplete nature of the SEC files, for whatever cause, and because of the accounting practices of Starr, it is not possible to

104.3 FM

Exhibit A - 5

A 95

SEP 26 1974

A Starr Group Station

2 West 45th Street New York NY 10036 212/757 6171

RECEIVED BY FCC
MAIL BRANCH

SEP 26 1974

September 18, 1974

Mr. Matthew Edwards
WNCN Listeners Guild
663 5th Avenue
New York, NY

Dear Mr. Edwards:

This will confirm our oral advise of yesterday, namely that after careful consideration, we have decided that your request for time does not come under the "fairness doctrine".

Accordingly, your request for time has been denied.

Cordially,

Paul Wachsmith
Station Manager

PW:ml
cc: Kristen Booth Glen

America's Foremost Fine Arts Station

Exhibit A - 6

A 96

RECEIVED
SEP 24 1974
COMPLAINTS AND COMPLIANCE DIVISION

RECEIVED BY FCC
MAIL BRANCH ON
SEP 23 1974

663 Fifth Avenue
New York, N.Y. 10022

September 19, 1974

C9 -1563

To: Mr. William B. Ray, Chief
Complaints & Compliance Department
Broadcast Bureau
Federal Communications Commission
Washington, D.C. 20554

RE: Fairness Doctrine Complaint against
Starr Broadcasting, licensee of WNCN,
New York, N.Y.

Dear Mr. Ray:

During the latter part of August 1974, it was announced by W. F. Buckley, Jr., chairman of the Board of Directors of Starr Broadcasting, that WNCN would change its format to rock-n-roll after 17 years of presenting Classical music. Concurrent with that change Starr Broadcasting apparently intended to also change the call letters of its New York station to WQIV.

The announcements by Mr. Buckley, Ms. Topaz, and other station employees were broadcast at the rate of at least 10 per day (by my estimate) beginning the week of August 22, 1974.

The change of format has become a matter of great concern to WNCN listeners in the tri-state area, and has been widely reported in the press, and the subject of some TV news inserts. Its controversiality has been evident from not only the frequency of WNCN's own announcements, which I understand were logged as editorials, but also editorials in the New York Times, and comments by other writers. It is obvious from the volume of mail received by WNCN, and the FCC itself, I understand, that this matter has become one of extreme public importance.

Starr Broadcasting has used its own facilities to attempt to raise funds to relocate the format on an unnamed educational radio channel in the New York area, thus diverting public attention from its own responsibility. There is much confusion among the listening public, including the 20,000 people who pledged $ 500,000. to assist in finding a new home for the classical music now broadcast on WNCN. To add to the confusion still further, Mr. Buckley offered the use of the WNCN call letters on another channel after October 5th! In short the public has no idea how the money was to be spent.

The FCC's 1949 Editorializing Report and subsequent statements concerning the fairness doctrine indicate that licensees have a special obligation to provide balance in discussion of public interest issues, especially when broadcast stations are used to serve the licensee's own interests.

On September 10th I wired WNCN, and others-including a copy to you, asking for time to reply and offer alternatives to the large body of concerned listeners. After 1 week, I was informed by telephone by the station's attorney that time would not be granted by WNCN, and I was subsequently written to the same effect.

Because of the extreme shortage of time before October 5th, I urge immediate action by the FCC to allow us, or other representatives to speak over WNCN, or better, delay the format change so that we have an equal length of time to unconfuse the public.

Sincerely yours,

Matthew Edwards
Secretary, WNCN Listener Guild
a-P, Classical Radio for Connecticut

Exhibit B

NEW YORK TIMES - EDITORIAL
September 28, 1974

A 97

The Public Ear

If radio listeners had one less rock-and-roll music station, the walls of New York would not come tumbling down nor would the Tower of Babel fall. Of the thirty-odd AM and FM stations broadcasting to city listeners, eleven have "rocks" in their music. Instead of one less, New Yorkers seem about to get a twelfth catering to the so-called youth market. The tragedy is that its entrance will push off the dial Station WNCN—which, together with WNYC and WQXR, is a lonely outpost mainly devoted to classical music.

WNCN is slated to disappear on Oct. 5, its place taken by WQIV, playing something known as "progressive rock." Its disappearance would drastically cut listeners' access to operas, symphonies and concerts, a distinct curtailment of choice on the publicly franchised airwaves. The background of this changeover deserves scrutiny by the Federal Communications Commission, under its mandate to foster greater diversity in radio.

When the Starr Broadcasting Group bought WNCN a year and a half ago, it vowed to continue the classical music format that had brought distinction and loyal listeners since the station was founded in 1957. The F.C.C. approved the transfer on the basis of that promise.

At this late point, it is plain that the new owners have no interest in listener pledges of financial support to save the station. If WNCN is to be kept on the air as a classical music station, only the F.C.C. has the regulatory power to insist that the promise given at the time of the license transfer be matched by performance. The commission's responsibility is to intercede, hold hearings and act within its authority to safeguard the public earwaves.

THE MEDIA

The Sound of Money

The murmurous voice on the radio was unmistakably that of William F. Buckley Jr., but its recorded message was more reminiscent of a Jerry Lewis telethon pitch. "Write to 'Save WNCN'," purred Buckley. "Mention the amount of money you would be willing to donate . . . It would be tax-deductible."

What drove millionaire Buckley onto the fund-raising firing line was partly altruism—and partly a desire to extricate himself from an embarrassing situation. The conservative commentator is board chairman of Starr Broadcasting Group, owners of New York City's WNCN-FM, a 24-hour-a-day classical-music station with a ferociously loyal following. Last month, Starr stunned WNCN listeners by announcing that the commercial station was running up so much red ink that it would change to a pop-music format on Oct. 5. Ten pop stations already clog the city's AM and FM radio dials; only WNCN offers round-the-clock relief for lovers of classical music. Thus the station's switch touched off a fierce outcry—and cast the cultured Buckley in an awkward role.

Chairman Buckley pronounced Starr's decision a "personal and professional" disappointment, and took to the airwaves to appeal for pledges of financial support. Buckley's campaign was not designed to save WNCN's classical format, however, but only somehow to transfer it to another channel. Under the plan, the listeners' donations and WNCN's $750,000 record collection would be handed over to any one of New York's three noncommercial stations that would agree to assume WNCN's full-time classical programing for at least two years. Whether or not they fully understood Buckley's proposal, thousands of WNCN loyalists—from Mick Jagger to a Capuchin monk—promptly pledged more than $500,000. But by last week no other station had taken up Buckley's offer—and some sour WNCN partisans began to grumble that they were being taken for a classic public-relations ride.

The most prevalent suspicion was that the New Orleans-based Starr Broadcasting, which operates eleven popular-music stations in the U.S., had intended all along to scuttle WNCN's traditional format for more lucrative programing. The campaign for listener support, some contend, was a charade to divert WNCN's irate following from what Starr officials feared most—an organized citizens' protest to the FCC.

Questions: Buckley, a 7 per cent stockholder in Starr who resisted the format switch, was upset enough by such charges to offer to resign his chairmanship if they could be proven. But the most puzzling question was why WNCN couldn't simply use the $500,000 in listener pledges to preserve its present format. "That did cross my mind," said Peter Starr, 32, the parent firm's president. "But we're a publicly owned company. If we have to run something as a noncommercial venture, we shouldn't be in the business." The real question, of course, is why a station with such a devoted following can't turn a reasonable profit—providing that it has an enterprising management.

At least two WNCN listeners' groups have begun to petition the FCC to investigate the whole affair. While similar protest movements have salvaged classical-music stations in other cities, the time wasted on the "Save WNCN" campaign could turn out to be fatal. The most revealing note was sounded by New York City Center president Richard Clurman, head of a blue-ribbon committee appointed by Buckley to find a noncommercial station willing to assume WNCN's format. "We are like a disaster-relief committee," sighed Clurman last week, "coming in after the disaster."

Buckley at the keyboard: A classical bind

WNCN's Classical Fans ..... Ask the FCC to Step In

By JAMES NORMAN

A group of listeners of radio station WNCN here has petitioned the Federal Communications Commission to bar the station from changing its programming from classical to rock music.

Kristin Glen, a lawyer representing the WNCN Listeners Guild, said the 70-page legal paper was presented to the FCC yesterday.

William F. Buckley Jr., chairman of the board of the Starr Broadcasting Group of New Orleans, which owns the station, has announced plans on Oct. 5 to switch the call letters to WQIV and to change the format to rock music.

A spokesman for the FCC in Washington said that attorneys for the station had indicated they would reply in part to the Listeners Guild's petition today, but that a full reply would take longer. He declined to say whether the FCC could reach a decision in the matter before the Oct. 5 switch-over date.

Starr, which bought the station a year and a half ago and promised the FCC at the time it would continue the 17-year-old tradition of 24-hour-a-day classical programming, maintains it is losing money on the present format.

Miss Glen said that the purpose of the petition is to have the license of the station revoked and to request an order barring the station from changing its format until a hearing on the license question can be held.

Grounds for Action

Among the grounds for the action Miss Glen said are:

¶The type of programming in WNCN is musically unique in the New York broadcast area.

¶There has been no documentation of the station's claim that it is not making money despite adequate attempts to turn a profit.

¶The station has not lived up to its commitment to continue broadcasting classical music.

¶The station has denied equal time to those who maintain that there is another side to the question of how to preserve classical music broadcasting in New York.

¶The station has failed to meet an FCC requirement that it make correspondence from its listeners available for public inspection.

Starr board chairman Buckley has appointed a panel of prominent citizens to deal with the question of how to disburse $500,000 in pledges made by some 20,000 WNCN listeners responding to a broadcast appeal for funds to support a listener-sponsored classical music station.

Sources close to the fund-raising drive have informed The Post that nearly 25 per cent of the contributors have already sent in checks.

Three Other Stations

Buckley, in making his appeal for funds, said he was negotiating with three FM stations here and would give the pledges, a promised $100,000 grant, and WNCN's record collection to any station willing to assume WNCN's identity and format.

Spokesmen for all three stations—WBAI, WNYC and WFUV—have expressed unwillingness to meet the conditions.

Miss Glen said that a formal request for equal time on the station to tell listeners that they had an alternative option in their efforts to save classical programming 24 hours a day in New York was rebuffed by the station's manager.

On another front, City Councilman Carter Burden, (DL-Man.), drafted a resolution for presentation before the next council meeting calling on the FCC to prevent the station from making the change.

A 100

VARIETY-SEPT. 25, 1974

WNCN-FM License Hit

A group calling itself WNCN Listeners Guild has asked the FCC to revoke Starr Broadcasting's license for WNCN-FM New York.

The classical-music station is changing to pop rock, and has gone through various contortions to get listeners to allow the change. It has set up a plan to transfer its classical music library to some other FM outlet.

But the community group charged Starr with duplicity, saying the format was deliberately and with premeditation undermined so Starr could go rock.

NEW YORK DAILY NEWS
September 24, 1974

A 101

Around the Dials

By VAL ADAMS

• • •

The WNCN Listeners Guild, a newly form, l group representing a coalition of classical music fans and public interest groups, has asked the Federal Communications Commission to revoke the license of WNCN. The radio station owned by the Starr Broadcasting Group has said it will change its format from classical music to progressive rock on Oct. 5.

The guild said that WNCN is the only New York station that broadcasts classical music 24 hours a day and that it's change of format will be a loss to 400,000 listeners. When Starr Broadcasting, whose chairman is William F. Buckley Jr., purchased WNCN, the petition said, Starr promised that more than 70% of the programing would be classical music.

The petition by the WNCN Listeners Guild was prepared by the Citizens Communication Center in Washington, D.C., and Kristia Booth Glen, a new York attorney.

• • •

A 102

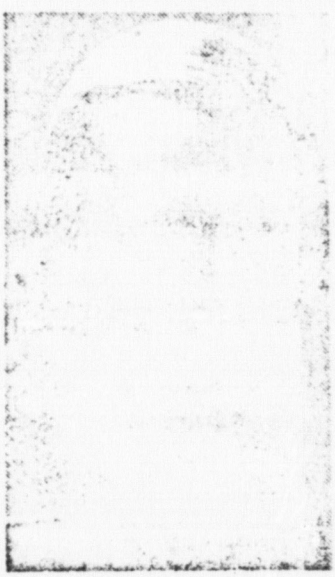
N.Y. DAILY NEWS-SUNDAY-SEPT. 22, 1974

RADIO ROUNDUP

By VAL ADAMS

ROSKO IS RETURNING. He's among the disc jockeys hired by WQIV, the new progressive rock FM station (104.3) that will displace WNCN and its classical music on Oct. 5. Rosko (real name: Bill Mercer) once worked on WOR-FM and WNEW-FM and more recently has lived in France. His show on WQIV will be broadcast from 5 to 9 p.m. each day except Sunday.

Thom O'Hair, who has been program director of KSAN, San Francisco, will be the program host from 1 to 5 p.m. The 9 a.m.-to-1 p.m. slot has been assigned to Larry Miller, WQIV's program director. Dave Mallow, now with KUDL, Kansas City, Kan., will be on from 9 p.m. to 1 a.m. The early morning man from 1 to 5 a.m. is Jim Cameron, who moves to the Big Apple from WLIP in Garnen City, Ill. Parttime deejays hired for weekends are Carol Miller, now with WNEW-FM, and Allan Bernstein, now with WBNW in Crestwood Manor, N.Y.



Norm N. Nite
Historian on pop

A host for the 5-to-9 a.m. slot has not been selected. The staff of WQIV, which will broadcast full time in quadraphonic sound, will include John Pozzuoli as news director and Mike Linder as public affairs director.

The Starr Broadcasting Group, owner of WNCN, has been heavily criticised by lovers of classical music for changing the call letters and switching to rock. William F. Buckley Jr., chairman of Starr Broadcasting, took an unusual position by vowing never to listen to WQIV. However, it's understandable. WQIV will enter the 18-to-35 age group. Bill's 48.

Despite Protests, WNCN Proceeds With Change

By IRS BROWN

While lawyers for at least two citizens groups have prepared petitions asking the Federal Communications Commission to preserve classical music programming by WNCN, the station's owner is mounting a splashy promotion campaign to introduce on Oct. 5 an entirely new station to succeed WNCN at 104.3 on the FM band.

With new call letters of WQIV, the station would offer progressive rock music in quadraphonic sound 24 hours a day and would present news with the point of view of the underground, or "alternative," press.

Meanwhile, a committee of prominent New Yorkers, which has assumed the responsibility for awarding the WNCN record library and some $200,000 in public pledges to a noncommercial station, has not yet received a proposal from any of the stations that initially evinced some interest in taking over at least part of the WNCN classical programming.

Richard Clurman, president of City Center, who is chairman of the committee, said he was expecting a proposal early next week from WNYC-FM, the municipal station.

WBAI Dropped Out

WBAI-FM, a listener-supported station that has been suffering financial distress and was considered a prospect by WNYC, has dropped out of competition by vote of its board of directors.

Officials of the Starr Broadcasting Group, which bought WNCN 15 months ago, had hoped to find a noncommercial station that would take over the unionized announcing staff of WNCN, as well as the concert music format.

Whatever the disposition of the present WNCN announcing staff, a number of disk jockeys [illegible] program director and general manager, Al [illegible], who has come to New York from Kansas City, Mo., where he had made a successful pop station for [illegible].

Many of the announcers [illegible] with Mr. Eisenberg at the Kansas City station. A third who will join the group, formerly with WABC-FM here, are not being brought in from other cities.

Mr. Eisenberg contended that the appeals to the F.C.C. by the citizens groups are futile and that the new station would go on the air as scheduled. He pointed out that the circumstances of the format change were unlike those in other cities, such as Chicago, Atlanta and Syracuse, where protest groups had successfully prevented stations from giving up their classical music programming.

In those instances, the changes in format were proposed either at the time the station was purchased or when the license came up for renewal. Traditionally, the F.C.C. has acted on citizen complaints only at license time.

The change at WNCN is occurring exactly midway in its three-year license term.

Group Files Petition

A petition filed Thursday by a group known as Classical Radio for Connecticut asks the F.C.C. to reopen the purchase proceedings, which took place before May, 1973, on the ground that Starr Broadcasting had misrepresented its intentions and knew when it acquired the station that it might change the format.

Another petition, which is expected to be filed on Monday by the Listeners Guild, a New York group, asks the agency in effect to advance the next license renewal date of May, 1976, on the ground that Starr had breached its promise to broadcast classical music 70 per cent of the time throughout its license period.

Kristin Glen, lawyer for the Listeners Guild, maintains that although the F.C.C. tends to act only at license renewal time, it has authority to intercede now.

The complaint of the Connecticut group, shared by a similar group in New Jersey, is that while the WNCN signal carries well for 50 miles in all directions out of New York City, the suburbs that might acquire its library and format were not so strong and would not be received as well, if at all, in the cities.

Everett C. Parker, director of the office of communication of the United Church of Christ and one of the leaders of the citizens movement in broadcasting, has charged that the appeals for funds to save the WNCN format, organized by William F. Buckley Jr., chairman of Starr Broadcasting, is a "deception by which Mr. Buckley has made his own legal and moral responsibility the public's burden."

Dr. Parker said that the campaign to find a new home for the format had "not only gulled the public, since it was unrealistic in the first place, but also diffused the protest." He pointed out that those who pledged funds in the belief they could save the format might otherwise have been part of a "throng storming the F.C.C."

'Diffused the Protest'

Present staff members at WNCN, who did not want to be identified for fear of losing their jobs, have pointed out that Starr Broadcasting is building up a larger staff and making a greater promotion effort for the new rock station than it did when it acquired the classical station.

They note that, in addition to a broad advertising campaign for WQIV, the station has hired a publicity man, Mike Linder, which WNCN never had, and has created a four-man news department while WNCN had none. The announcers merely tore off wire copy and read it for its newscasts.

Thomas Bird, who for eight years had been station manager for WNCN for the previous owners, the National Science Network, and stayed on with the Starr organization for about six months after the purchase, said in an interview that the Starr Group began with enthusiasm "to make the classical format work," but soon after grew cool to it.

"I began to hear messages that maybe it can't be done," he said in response to questions.

Mr. Bird, who said he was not "a disgruntled employe," said that during one period the Starr management "questioned why it was improper to place commercial announcements between movements of a symphony."

Paul Wadsmith, who has been both station manager and sales manager for most of the year, blamed the marketplace and advertising agency time-buyers and the ratings that govern their purchases—for killing WNCN as a classical music station.

"We came up 26th out of

NEW YORK TIMES - September 21, 1974
(cont.)

30-odd major stations in the ARB report for the New York area, and because of that we ran into terrific resistance at the ad agencies," he said. They said they couldn't justify buying us.

"We all know that radio ratings are a farce, "but that's what controls the market, and that's what we're stuck with."

Mr. Eisenberg, who will head WQIV, said the new station would aim for the 18 to 34 age group, which advertisers consider the prime consumers. Acknowledging that many other stations are courting the same segment of the audience, he said, "Isn't there room to serve it better?"

WQIV, he said, "would not so much be taking something out of the market as bringing something new in." What will be new, according to Mr. Eisenberg, will be the 24-hour quadraphonic sound, the "creativity" of disk jockeys selecting the music themselves and news and public affairs programing "that does not express the establishment viewpoint but is in tune with how young people think."

He said there would be five-minute features entitled "Roll Away the Stone News" and another set to be called "Earth News." He said the news staff of four would find its inspiration in the youth-oriented periodicals, although the basic hard news would be supplied by the United Press International wire.

Asked why a need was perceived for another "youth-oriented" music station when there already are 11 major radio stations in the New York market playing what is generally called "contemporary music," Mr. Eisenberg said:

"There are many forms of rock, but only one other station, WNEW-FM, is doing progressive rock. We plan to do it differently from them."

Progressive rock was defined as a form that infuses elements of jazz, blues and other musical idioms.

Mr. Eisenberg contended that the advertising campaign for WQIV, although extensive, would really not cost very much since most of it would involve reciprocal exchanges with other advertising media.

"I wouldn't want to create the impression that Starr Broadcasting allocated more funds for the new station than for the old," he said. He pointed out that, as a classical station, WNCN's proposals for reciprocal advertising were frequently turned down by publications that now are most vocal in deploring the change of format.

EXHIBIT C (Sample petitions with signatures)
omitted as irrelevant

A 106

RECEIVED
SEP 24 1974
COMPLAINTS AND COMPLIANCE DIVISION

RECEIVED BY FCC
MAIL BRANCH ON
SEP 23 1974

663 Fifth Avenue
New York, N.Y. 10022

September 19, 1974

C9 -1563

C9 -383

To: Mr. William B. Ray, Chief
Complaints & Compliance Department
Broadcast Bureau
Federal Communications Commission
Washington, D.C. 20554

RE: Fairness Doctrine Complaint against
Starr Broadcasting, licensee of WNCN,
New York, N.Y.

Dear Mr. Ray:

During the latter part of August 1974, it was announced by W. F. Buckley, Jr., chairman of the Board of Directors of Starr Broadcasting, that WNCN would change its format to rock-n-roll after 17 years of presenting Classical music. Concurrent with that change Starr Broadcasting apparently intended to also change the call letters of its New York station to WQIV.

The announcements by Mr. Buckley, Ms. Topaz, and other station employees were broadcast at the rate of at least 10 per day (by my estimate) beginning the week of August 22, 1974.

The change of format has become a matter of great concern to WNCN listeners in the tri-state area, and has been widely reported in the press, and the subject of some TV news inserts. Its controversiality has been evident from not only the frequency of WNCN's own announcements, which I understand were logged as editorials, but also editorials in the New York Times, and comments by other writers. It is obvious from the volume of mail received by WNCN, and the FCC itself, I understand, that this matter has become one of extreme public importance.

Starr Broadcasting has used its own facilities to attempt to raise funds to relocate the format on an unnamed educational radio channel in the New York area, thus diverting public attention from its own responsibility. There is much confusion among the listening public, including the 20,000 people who pledged $ 500,000. to assist in finding a new home for the classical music now broadcast on WNCN. To add to the confusion still further, Mr. Buckley offered the use of the WNCN call letters on another channel after October 5th! In short the public has no idea how the money was to be spent.

The FCC's 1949 Editorializing Report and subsequent statements concerning the fairness doctrine indicate that licensees have a special obligation to provide balance in discussion of public interest issues, especially when broadcast stations are used to serve the licensee's own interests.

On September 10th I wired WNCN, and others-including a copy to you, asking for time to reply and offer alternatives to the large body of concerned listeners. After 1 week, I was informed by telephone by the station's attorney that time would not be granted by WNCN, and I was subsequently written to the same effect.

Because of the extreme shortage of time before October 5th, I urge immediate action by the FCC to allow us, or other representatives to speak over WNCN, or better, delay the format change so that we have an equal length of time to unconfuse the public.

Sincerely yours,

Matthew Edwards
Secretary, WNCN Listener Guild
c/o P. Classical Radio for Connecticut

WNCN
104.3 FM

A 107

Sep 26 1974

A Starr Group Station 2 West 45th Street New York NY 10036 212/867 6171

RECEIVED BY FCC
MAIL BRANCH OFFICE
SEP 26 1974

September 18, 1974

Mr. Matthew Edwards
WNCN Listeners Guild
663 5th Avenue
New York, NY

Dear Mr. Edwards:

This will confirm our oral advise of yesterday, namely that after careful consideration, we have decided that your request for time does not come under the "fairness doctrine".

Accordingly, your request for time has been denied.

Cordially,

Paul Wachsmith
Station Manager

PW:ml
cc: Kristen Booth Glen

America's Foremost Fine Arts Station

A 108

FLY, SHUEBRUK, BLUME AND GAGUINE

JAMES LAWRENCE FLY
(1968)
PETER SHUEBRUK
JACK P. BLUME
BENITO GAGUINE
JEROME S. BOROS
HERBERT M. SCHULKIND
DONALD E. WARD *
HOWARD J. BRAUN *
JAMES K. EDMUNDSON *
STUART A. SHORENSTEIN **
ARTHUR G. HOUSE *

* D. C. BAR ONLY
** N. Y. BAR ONLY

Washington, D. C.
October 3, 1974

15 ROCKEFELLER PLAZA
NEW YORK, NEW YORK 10020
(212) 247-3040

1211 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 293-1282

Re: WNCN Fairness
Complaint

Dear Mr. Ginsburg

Supplementing the Starr letter of September 27 relating to the fairness complaint filed by the WNCN Listeners Guild, the Commission is respectfully advised that news accounts of the status of the matters relating to the proposed change in format by WNCN, and of the litigation concerning said change before the Commission and before the Courts, were broadcast by WNCN six times on Saturday, September 28, six times on Tuesday, October 1, and hourly beginning at 10 p.m. October 2. The latter announcements are scheduled to continue throughout October 3 on an hourly basis.

Illustrative of the continuity employed in the hourly announcements which commenced on October 2, is the enclosed continuity of a news item which was transmitted to the undersigned by phone from the station. The continuity which was broadcast should be identical to, or very closely parallel, the enclosure. Copies of the continuity used in the first two series of broadcasts on September 28 and October 1 have not yet been received by counsel but will be supplied to the Commission and other parties when received.

In the event that there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours

Benito Gaguine

Arthur Ginsburg, Esq.
Assistant Chief
Complaints and Compliance Branch
Federal Communications Commission
Washington, D. C. 20554
cc: Milton Gross, Esq.
Joseph Volpe, Esq.
Samuel Miller, Esq.
Charles M. Firestone, Esq.
Ms. Kristen Booth Glen

Type of Continuity employed in News Broadcasts over WNCN hourly - beginning at 10 p.m., October 2, 1974.

This is a news report to the listeners of WNCN.

We have already reported the proposed change in programming by Station WNCN effective October 5, from its present classical music format, to a different one. In recent weeks the station has received voluminous correspondence and many petitions from listeners objecting to the proposed format change, primarily on the basis that WNCN is the only New York City station broadcasting a mix of classical music selections 24 hours per day. In addition to these complaints, two groups, the WNCN Listeners Guild and Classical Radio for Connecticut, have filed pleadings before the FCC requesting, among other things, that the Commission prohibit a change in the format and that it stay such change during the period that the Commission considers the merits of the various filings by these groups. In addition, the Guild alleges certain character deficiencies in the licensee and questions its qualifications to remain a licensee.

Starr WNCN, Inc., the licensee, has filed letters and pleadings with the FCC opposing the petitions of these two groups. The thrust of Starr's submissions are that the change in format is necessitated by financial considerations

since the classical music format over the past 17 months has not proved to be financially viable. Starr also stated that the decision to change a musical format during its license term, is legally within the sole discretion of the licensee.

The Commission today issued a Memorandum Opinion and Order denying the motion for stay filed by the two groups. The Commission in its Order agreed that Starr's contention that primary responsibility for determining a station's format rests in the licensee's judgment. The Commission also stated that it had grave doubts whether it had the power to order Starr not to change its format in view of the prohibition against Government censorship contained in Section 326 of the Communications Act.

On October 1, the WNCN Listeners Guild filed a Notice of Appeal and a Petition for Review in the U.S. Circuit Court of Appeals for the District of Columbia Circuit. We are advised that a request for a stay of the action taken by the Commission today, will be filed with the same Court by the Guild on October 3.

As has been previously reported by WNCN, a committee selected by the licensee is attempting to secure the co-operation of another FM station in the city to maintain the WNCN record library and to carry the classical music programming format which will be suspended by WNCN on October 5.

The Committee has also requested pledges or financial contributions to help fund the operation with this format over a non-commercial station. Pledges in excess of $500,000 have already been received by the committee. However, to date no firm commitment has been received from another licensee to carry the WNCN format although negotiations continue.

The Guild has taken the position that the WNCN format could be preserved by various methods such as supporting donations by listeners or changes in WNCN practices in the sale of time, other than the change to a non-commercial station.

WNCN has been picketed for the last several days by listeners opposing the proposed change in format.

WNCN will attempt to keep its audience fully apprised of the news and of the factual developments in this matter. In the event that any listeners are interested in making contributions to the committee formed to obtain funding for the WNCN format over a non-commercial station, they may do so by contacting Save WNCN, 2 West 45th Street, New York, New York 10036. In the event that listeners wish to support the position of the WNCN Listeners Guild or Classical Radio for Connecticut, the addresses of these two organizations are 663 5th Avenue, New York, New York 10022 for the Guild and 944 Washington Building, Washington, D. C. for Classical Radio.

It is assumed that listeners wishing to receive further information on the views expressed by these two organizations may do so by contacting them directly.

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RECEIVED OCT 4 1974

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

October 3, 1974

IN REPLY REFER TO:
8330-S
C9-1280

WNCN Listeners Guild
30 East 42nd Street
New York, New York 10017

Gentlemen:

This is in reference to your fairness doctrine complaint against radio station WNCN-FM, New York, New York dated September 23, 1974. 1/ You stated that WNCN-FM was the only 24-hour-a-day classical music station in the New York area, and its programming, "in musicological terms," was more broad and varied than "its 'rival' station"; that WNCN-FM had announced its intention to change format from classical to rock music; that several groups were formed to oppose the change, and there was much critical comment in the New York press adverse to the format change; that as a result of protests from listeners over the change, the management of WNCN-FM embarked on a "save WNCN" campaign whereby it solicited pledges for a proposed educational station which would assume WNCN-FM's call letters and format; that "editorial" announcements which presented the station's "'plan' for a listener sponsored station on another channel. . .as the only alternative to a total loss of WNCN's classical programming" were broadcast "on virtually an hourly basis for more than two weeks"; and that to date WNCN had "not sought out or presented conflicting views." You have also submitted to the Commission transcriptions of the announcements broadcast over WNCN-FM which solicit pledges for the proposed non-commercial station. One of the transcriptions stated that the management of WNCN-FM "would appreciate any and all pledges to help make WNCN a continuing force in New York music, to maintain it as a full time classical music station in New York City and that can only be done if it becomes a listener-supported, non-commercial station because this frequency is being taken October 5 by another format, a different kind of music."

In a response to your complaint, dated September 27, 1974, WNCN-FM stated that you had failed to "specifically define the 'issue' that is claimed to be 'controversial'"; that "the announcements broadcast over the air by WNCN-FM . . .clearly did not present one side of a controversial issue, even assuming that WNCN's format change may be so characterized"; that "the announcements simply took note of WNCN's change of format and requested that listeners fond of the classical music format pledge money to sustain the format on a non-commercial station"; that the "merits of WNCN's change of format was not even

1/ This complaint was included in your Petition filed September 23, 1974 seeking relief in connection with WNCN-FM's format change.

mentioned, let alone argued during the broadcasts"; and that "[w]hat may have been discussed or argued in the press about WNCN's change of format is another matter entirely and one to which the Fairness Doctrine in broadcasting has no application."

In a reply to the response of WNCN-FM, you stated that "[i]t is clear from all correspondence and complaints made by the WNCN Listeners' Guild that the controversial issue of public importance to which it was referring was WNCN's change of format"; that "to transfer the WNCN format intact to a noncommercial station, is one side of the controversy over WNCN's change of format"; that the Commission stated in its Fairness Report, 39 Fed. Reg. 26372 (1974) "that 'a broadcast may avoid explicit mention of the ultimate matter in controversy and focus instead on assertions or arguments which support one side or the other on that ultimate issue'"; that "[r]easonably, no licensee could dispute that the 'Save WNCN' campaign was one way to continue the unique WNCN format, but not the only way"; that "[a]ssuming arguendo that WNCN had not aired one side of the controversial issue of public importance relating to the station's change of format, the licensee would have violated its affirmative obligation under the fairness doctrine to cover controversial issues initially"; that "WNCN would have a special obligation to inform its audience of the various 'partisan' sides to this hot issue"; and that "[u]nless it can demonstrate a practice of airing many other controversies of importance to its service area, or airing the various sides to this change of format controversy, WNCN has violated the first and basic tenet of the fairness doctrine."

The Commission is prohibited by Section 326 of the Communications Act from censoring broadcast matter, and it does not attempt to direct broadcasters in the selection or presentation of specific programming.

However, under the fairness doctrine, if a station presents one side of a controversial issue of public importance, it must afford reasonable opportunity for the presentation of contrasting views. This policy does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can be said to have acted reasonably and in good faith.

We have stated:

> The Commission has long held. . .that it is both the responsibility and within the discretion of the broadcast licensee or network to determine whether a controversial issue of public importance has been presented in its programming and that the burden is on the complainant to establish that the licensee's or network's judgment in such matters was unreasonable or in bad faith. Gary Lane, 38 FCC 2d 45 (1972); Application for Review Denied, 39 FCC 2d 938 (1973).

It is true that the Commission stated in its Fairness Report, supra, that "a broadcast may avoid explicit mention of the ultimate matter in controversy and focus instead on assertions or arguments which support one side or the other on that ultimate issue," and, in such a case, the fairness doctrine would be applicable. However the Commission made it clear that the responsibility for and discretion in determining whether or not a controversial issue of public importance was presented is still vested in the licensee. Assuming arguendo that the issue of WNCN-FM's format change is a controversial issue of public importance in the New York City area, after reading the transcripts submitted by both you and WNCN-FM we cannot say that WNCN-FM was unreasonable in determining that the announcements in question did not present one side of a controversial issue because the announcements "simply took note of WNCN's change of format" and did not argue the merits of the change. In Gary Lane, supra, it was held that a licensee may reasonably determine that a discussion which is "focused on" a non-controversial issue does not become a presentation on a controversial issue of public importance merely because it "touched upon. . .incidentally" a subject which may be controversial. Here it can reasonably be said that the announcements urging listeners to pledge money to support continued classical music programming did not advocate a position on the dispute over whether WNCN-FM should change its format. The finding of a judgment within the bounds of reason, whether or not it is the same judgment we would reach as an initial matter, is dispositive of our function under the fairness doctrine.

Insofar as WNCN-FM's "affirmative obligation under the fairness doctrine to cover controversial issues initially," the Commission has stated:

> [i]t is the licensee. . .who must determine what percentage of the limited broadcast day should appropriately be devoted to news and discussion or consideration of public issues. . .and who must select or be responsible for the selection of the particular news items to be reported or the particular local, state, national or international issues or questions of public interest to be considered. . .Report on Editorializing by Broadcast Licensees, 13 FCC 1246 (1949).

In its Fairness Report, supra, the Commission stated that while licensees did have an affirmative responsibility to cover controversial issues of public importance:

> [W]e have no intention of becoming involved in the selection of issues to be discussed, nor do we expect a broadcaster to cover each and every important issue which may arise in his community.

In view of the above, no Commission action is warranted on your complaint. It should be noted that this ruling is addressed solely to the fairness question, and not to any other issues which may be raised by this matter.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D. C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

William B. Ray, Chief
Complaints and Compliance Division
for Chief, Broadcast Bureau

cc: WNCN-FM
Charles Firestone, Esq.
Robert Schack
Counsel for Licensee

A 116

STARR OPPOSITION TO PETITION OF WNCN
LISTENERS' GUILD

Dated October 4, 1974

Pages 12-13
Exhibit 7

by him in his reply to the New York article (see Exhibit 7"Buckley (Politely) Returns The Hand Grenade").

25. Buckley and the Starrs, having come to the conclusion that the WNCN classical music format could not carry itself on a commercial basis, began to explore the possibilities of having it transferred to a non-commercial station and to assist such a move by making the WNCN extensive classical music library available to such a station; 5/ by ascertaining that the experienced WNCN classical music station personnel would largely be available; and by attempting to raise money to fund the proposed non-commercial operation. 6/ (See Exhibit 7). Among the stations contacted were WBAI-FM (which decided not to go along with such a project since it indicated that it would interfere with its non-music format); WNYC-FM (which has advised WNCN management of its intention of

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5/ Of course the library will be preserved by WNCN pending Commission consideration of the merits of the instant petition and subsequent judicial review if any, if it cannot be placed with a station willing to adopt the WNCN classical music format.

6/ Some question appears to have been raised by the Guild as to the handling of the letters received at WNCN relating to the fund raising efforts. The affidavit of Mr. Wachsmith (Exhibit 12) describes the procedures used. The announcements relating to requests for contributions and pledges to fund the operation of the classical music format over another station which were broadcast over WNCN, were erroneously logged by the traffic clerk, Ms. Sweeney, as editorial while, in fact, they clearly were not. A copy of continuity employed in these announcements was annexed to the Starr letter to the Commission of September 27, 1974. (Exhibit 13). The questions raised by the Guild relating to an alleged violation of the fairness doctrine have been answered by Starr (Exhibit 13) and passed upon by the Commission (Exhibit 14) and need not be elaborated upon again here.

carrying certain additional classical music programs (see Exhibit 8), and which possibly may receive all or part of the WNCN library; and with WFUV-FM, a station licensed to Fordham University with whom discussions are still progressing. Further contacts are also being explored. (Also please refer to Exhibit 7).

26. Once the decision was made to modify the format, certain personnel changes were required at WNCN and included the reassignment of Allen Eisenberg from Kansas City to New York; and notice being given to several WNCN employees whose forte was primarily in the field of classical music. Larry Miller, who had left Kansas City and returned to New York was also re-employed. WQIV was selected as the new call letters for the reasons set forth in page 10 above, and an appropriate request was filed with the Commission for such call and circulated among the stations within the 35-mile WNCN contour.

27. The progressive rock format was selected as a result of a study of the various formats in use in the New York area. In the judgment of the Starrs, and of top management, this was the format which was least in use (one station); for which there appeared to be an unfulfilled need; and which gave most promise of financial success in light of Starr's prior experience in other markets. It also provided a format within which certain non-music elements of the programming could best be inserted and developed. Accordingly, it was selected and plans towards its adoption and operation were made. The Commission was advised of the proposed change in format

Buckley (Politely) Returns the Hand Grenade

By William F. Buckley Jr.

"...Nowadays a profession of innocence, even from people theretofore unconvicted of any felony, is no longer enough..."

I had proposed—in fact I put it that way to Clay Felker, when I talked with him over the telephone just after the Save WNCN drive was organized—to report on the whole experience in *New York* Magazine, but only after it was all over, i.e., after the successor station to WNCN, if there is to be one, was anointed, and the future made clearer.. But Mr. Alan Rich, writing for *New York* ("Mr. Buckley Passes the Buck," September 23) has made this impossible. He has loosed, in the New York community, a farrago of charges and innuendoes that need acknowledgment not only because they defame such exemplary people as myself, but because they threaten an operation the success of which would mean the preservation of my idea of very-good-music in New York City, more or less round the clock.

Here is a compressed account of Mr. Rich's understanding of what happened.

The Starr Broadcasting Group, a company based in New Orleans, spotted WNCN-FM, a wobbly full-time classical music station, as a doorway into the New York market. Starr approached the ailing station, which had been put up for sale by previous owners after losing hundreds of thousands of dollars year after year after year, and bought it. But in order to get the F.C.C. to approve the purchase, Starr pretended that it would continue to operate it as a classical station. "Actually, it now turns out that WNCN's owners, the Starr Broadcasting Group, of which William F. Buckley Jr. is chairman of the board, had charted its course when it took over the station a year ago. 'We'll keep the classical policy for a year,' the station manager at that time told a few insiders 'off the record,' 'and then we'll plead poverty and make the change.' Thus, the WNCN changeover had been on the board months before *New York* broke the story."

In a pleasanter age, it would be required only that Mr. Peter Starr, the company's president, or I, the chairman of the board, should be able to say, simply: "Mr. Rich is mistaken, as also his anonymous informant. It was not so. WNCN was purchased with the resolve to operate it successfully as a classical station"—whereupon inflamed New Yorkers would permit themselves a smile of relief. But we have all suffered from the skepticism induced by the behavior of our leaders over recent years, so that nowadays a profession of innocence, even from people theretofore unconvicted of any felony, criminal or metaphorical, is no longer enough. One might go further and say that in a better age (under more conscientious auspices?) a writer, before imputing evil behavior to several theretofore unindicted people, would have telephoned—say the president of Starr—and asked him to comment on the alleged statement by the putative station manager. Mr. Rich did not take the trouble to do this, nor was he, so far as one can tell, asked to do this by his publisher. It is under these circumstances necessary to exercise the slightly humiliating task of proving that our president is no crook.

Peter Starr told the chairman of his board, in the summer of 1972, that he

Illustrated by Marvin Mattelson

was contracting to buy WNCN. "Don't worry," he said. "We're going to make a go of it." He said that because he knew that I, and my closest colleagues at *National Review*, had for many years been listeners, not to say addicts, of the station. He has known my taste in music since he was thirteen years old, which is when he left his paper route and began working, during the summer until his graduation from college, for me.

On assuming control of WNCN in May of 1973, Starr dispatched, to manage the station, Mr. Robert McDole. He came to New York highly qualified and with the single instruction: make it work. In the ensuing months, Starr sent to New York, to help invigorate the station's sales efforts, a team of three people, the top troubleshooters in a company that manages eleven broadcast stations. The experts worked in collaboration with Mr. McDole, and briefly with his successor. The revenues came up dramatically, exhilaratingly. Briefly. In the late spring the figures began to drift down. In part, one reasonably supposes, because the specially talented hypo-artists had returned to New Orleans. In part because advertisers, weighing the commercial results of having advertised on WNCN, decided they could spend their bucks better elsewhere. To suggest that under the circumstances Starr should have simply plopped down its top experts in New York more or less permanently assumes that (a) experts can forever prevent market dissatisfaction from surfacing; and that (b) a national enterprise can afford to devote the full time of its most expensive experts to the difficulties of a single one of its enterprises. Perhaps if all the salesmen who sell *Time* and *Sports Illustrated* had gone to work instead to sell *Life*, *Life* would have survived. But that leaves unsatisfied the question whether *Time* and *Sports Illustrated* would have suffered, or gone down, on account of such neglect; and, also, leaves unanswered the question of how much money WNCN would have to make in order to break even if you added to its overhead the very high salaries of experts who command very high salaries. I do not doubt that Betty Furness and Johnny Carson could hugely increase revenues to WNCN if they became its principal salesmen. I doubt only that there would be money left over, after paying their salaries, to pay WNCN's light and power bill.

Along around July—that is, about a year after he began to operate the station—Peter Starr told me that his hopes for WNCN had been unrealistic. Here, he told me, are the bare-bones figures. Although 15 per cent of New York radio programming is classical, only 3 per cent of the radio audience listens to classical music, and 4 per cent of the advertising dollar is spent on classical music stations. An interesting point. The figures suggest a considerable (25 per cent) aesthetic patronage, by advertisers, of classical music. Speaking off the record (I am still chairman of the board), I do not find this subsidy dismaying. Now, Peter explained, WQXR—for reasons I chivalrously decline to elaborate—has three times the audience of WNCN. Of the 4 per cent, WQXR is getting 3.2 per cent. To make ends meet, WNCN would need 2 per cent. It is—simply—not in prospect.

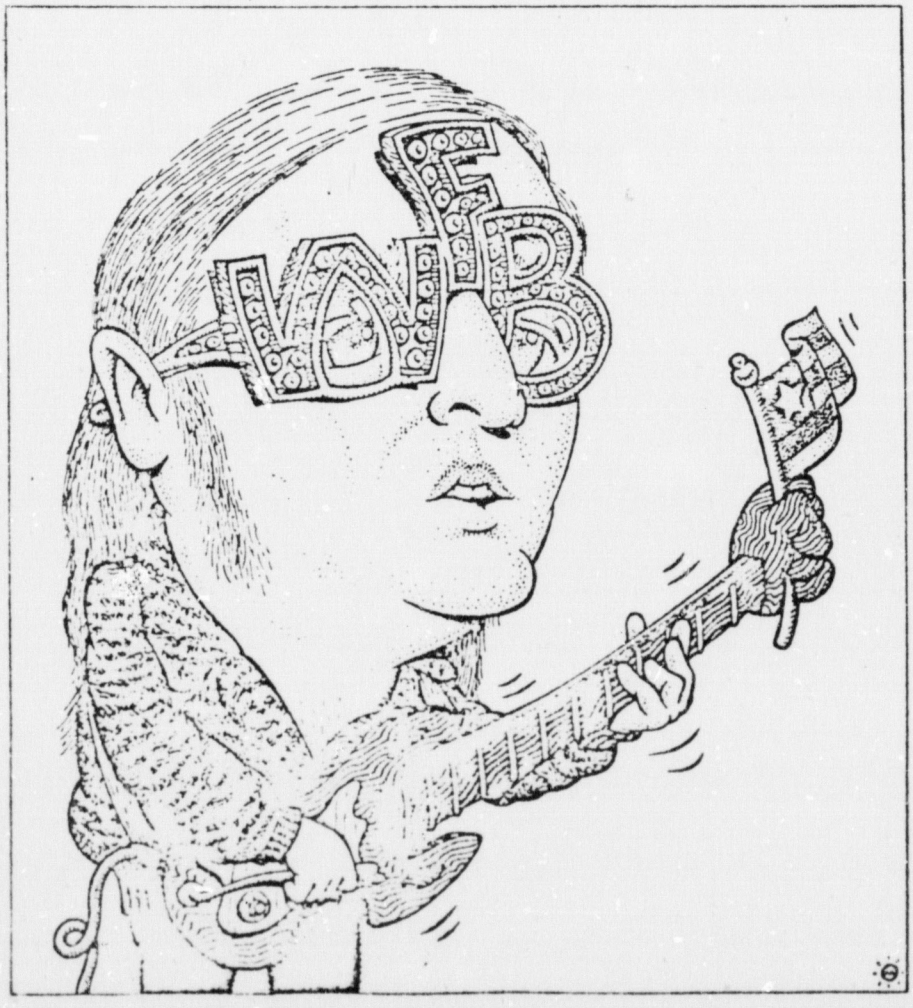
WNCN, as it worked out, emerged as the only property operated by Starr that didn't return an operating profit. It registered a loss—of $290,000. (These are the audited figures.) However, Peter pointed out, the figures did not even reflect WNCN's share of the New Orleans overhead—chargeable, by conventional practice, to WNCN: so that the loss was really higher.

How—I asked—had his efforts for WNCN paid off during the year? The new management *doubled* the antecedent revenue. Even so, the loss exceeded the loss of the previous owner—indeed, doubled it. The paradox is easily explained. The previous owner, having purchased the station for very nearly nothing, had no debt to service, let alone profits to distribute. Starr paid $2.1 million for the station. Merely keeping the banks at bay requires over $200,000. That's without earning any equity for the stockholders, whose money, of course, you are ultimately dealing with.

Mr. Rich writes that the decision to alter the format shouldn't have surprised anyone, since Starr Broadcasting is "the operator of a string of lucrative rock stations around the country." Actually, our most lucrative station (in San Francisco) isn't a rock station. Management isn't addicted to rock, though much of the country is. Mr. Rich continues, "Thus, whether or not Mr. Buckley likes that kind of music" —what does he mean, "*whether or not*"? Do I need to call one of Jaworski's people and tell him under oath that I don't listen to rock? Or should I volunteer my radios for monitoring?—"(he has heartbrokenly announced that he, personally, will not listen to the 'new' WNCN), he is a practiced hand at weeping all the way to the bank."

This passage is a fascinating concentrate of ill will, the principal catalyst of ill reason.

Examine it:



"...The station manager who denied plans on the air to change the format acted in good faith... I am glad no one telephoned me..."

1. Why "*heartbrokenly*"? Allowing for hyperbole (we all do it), let us take that word as, simply, a projection of "*disappointedly*." It would appear to be the planted axiom of Mr. Rich that you cannot be disappointed by something you approve of. That, of course, isn't true. (I was disappointed that Nixon would be impeached, yet I approved of it.)

2. He says I am a "practiced hand at weeping all the way to the bank." Now let us examine *that*. "Practiced" means it happens over and over again. When last did I go weeping to the bank? I have spent most of my adult lifetime—nineteen years—presiding over a publication that loses approximately $300,000 per year, towards which deficit I contribute most of my professional income. The accumulated loss of that venture is over $3.5 million. When I carry checks from editors, or book publishers, or lecture agencies, to a bank, which I do regularly and which I shall do forthwith on receipt of a check from Mr. Clay Felker for these very words—why should I carry them *weepingly*? I am, on the contrary, all smiles.

Mr. Rich struggles under the burden of thought. Elsewhere in the article he tells us that $500,000, which is the sum WNCN has raised in pledges toward a successor station, is a drop in the bucket—"a fund that any station could run through for normal operation in less than a year." (As ever, he exaggerates—we figure it would take $350,000 to run WNCN nonprofit for a year.) Now, I have worked on Starr, and its predecessor stations, since 1957. I haven't received any salary for my work, ever. I have over $150,000 of personal capital in the venture, and a billion hours of time. I own 60,000 shares of stock. These are worth, on the open market, about $260,000, except of course that you couldn't sell them for that, in this market.

Now Starr earned, last year, $1.20 per share. Paid out in dividends? No. Starr has never yet paid a dividend. (It is too highly leveraged.) It won't pay a dividend for many long years—the money goes to the banks. But supposing that it did, I would be paid $72,000. After taxes, that comes to $32,000. If I were to donate the whole of that to WNCN, that would pay for one month's deficit.

But let's make it easy for Mr. Rich. Suppose that I owned not 7 per cent of Starr, but 100 per cent—the whole business, 1.1 million shares. Would I then, exercising plenipotentiary control, vote to consume one-third of the company's earnings in WNCN? The answer is no, I would not. There are other demands I would meet first, most prominently the deficit of *National Review*. To say that one likes good music, however passionately, is not to say that one feels a personal responsibility to subsidize a listening community of 300,000 New Yorkers. I am not, alas, the Ford Foundation. And anyway, it would seem to me to have been established by the responses to WNCN's appeal that the listening community is quite prepared to pay for its own music. It comes to an average of one dollar per person per year, more or less; so if I had 300,000 eleemosynary dollars to distribute, I think I'd look for causes more acutely depressed. I consider that the "tragedy," to use the word Mr. Rich uses rather more informally than I do, but which is nevertheless appropriate to the thought of losing WNCN, lies in the possible *absence* of WNCN from New York, not in an assignment of the cost of its operation to its public. It is for the purpose of preserving the sound that I agitate. There are 41 FM stations in the metropolitan area, and I hope, along with a committee of distinguished New Yorkers, to persuade one of the 41 that it is better off carrying full-time classical music than doing what it is now doing.

There is the matter of *New York*'s "Intelligencer" section having announced two months ago that WNCN was going to change its format, and the heated denials of management. Local management, by the way, I find this a troublesome problem. But it is a pity that Mr. Rich discusses it as though the duplicity were uniquely WNCN's. The manager of the station who went on the air to deny any plans to change the format acted in good faith. He had called New Orleans and spoken with the broadcast supervisor, who authorized him to contradict the report. The very next morning Mr. Michael Starr, the vice-president, called WNCN and told him—without explanation—to stop issuing denials.

I am very glad that at that particular moment no one telephoned me. Because I knew from Peter Starr that the decision was all but made to change the format. How many times the management of *The Herald Tribune*, and of *Collier's*, and of *The Saturday Evening Post*, and of *Life* magazine, issued denials that publication would cease: until the fateful moment. In the case of *The World Journal Tribune*, that day's issue was the final issue, as Mr. Rich should not have forgotten, because he was thereupon canned: Jock Whitney did not decide to maintain a personal music critic. Partly it is corporate prudence—Don't Scare Away the Advertisers; partly it is elementary psychology—Don't Demoralize the Staff. It is the altogether conventional ethic in corporate practice. I happen to find it uncomfortable, which is why, as I say, I am glad the question was not put to me. But even if I had answered it forthrightly, I hope I would not have treated myself to a grateful reflection on how superior a being I am as compared, say, with John Hay Whitney, or Henry Luce, or whomever. Nor would it have occurred to me to rage that the cultural importance of *The Herald Tribune* and *Life* magazine cannot be exaggerated, and that Whitney and Luce being egregiously rich fellows, it was their duty to see that the journals survived, never mind the operating losses.

Mr. Rich writes about our proposal to continue WNCN on another station that this is a "tawdry insult to the intelligence." It may be an insult to his intelligence to ask him to comprehend the effort being made. It is not an insult to the intelligence of the committee, or to that of the 20,000 pledgers; and manifestly, the burden, after this article, is on Mr. Rich to establish that it is possible to insult his intelligence.

A final word. Having fantasized myself as sole stockholder of Starr Broadcasting, I re-emerge as owner of 7 per cent of the stock, but as chairman of the board of directors of a company in which there are many investors, including some very good friends, some of them not all that far removed from poverty. And I ask, how should one behave under such circumstances? And I think back on a conversation I had with an engaging, energetic, middle-aged friend. We chanced on each other going to Washington on the shuttle a couple of years ago. "You know," he said, discussing his own enterprise, "I go to a party, or a function of some kind or other, and I am always running into a friend who says 'Go to it! I've got some of your stock.' It makes you think," he said, "and really worry, about the importance of making a success of it." I replied: "I know what you mean, Clay." ■

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FCC (fair news)
Dkt
10/10

FLY, SHUEBRUK, BLUME AND GAGUINE

Washington, D.C.
October 10, 1974

JAMES LAWRENCE FLY
(1966)
PETER SHUEBRUK
JACK P. BLUME
BENITO GAGUINE
JEROME S. BOR
HERBERT M. SCH[illegible]ID
DONALD E. WARD *
HOWARD J. BRAUN *
JAMES K. EDMUNDSON *
STUART A. SHORENSTEIN **
ARTHUR G. HOUSE *

* D. C. BAR ONLY
** N. Y. BAR ONLY

45 ROCKEFELLER PLAZA
NEW YORK, NEW YORK 10020
(212) 247-3040

1211 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 293-1262

Re: WNCN
Fairness Complaint

Dear Mr. Ginsburg

Reference is made to the letter of Benito Gaguine, Esq. to you of October 3, 1974 relating to a Fairness Complaint filed by the WNCN Listener's Guild. Although the Commission's staff by letter of October 3, 1974 held that no Commission action was warranted on the Fairness Complaint in question, WNCN(FM) is enclosing herewith for the completeness of the Commission's files certain information and material relating to news accounts of WNCN's proposed change of format and of the ensuing litigation relating to same, which materials were broadcast by WNCN(FM).

Specifically, enclosed herewith are statements broadcast by WNCN(FM) on September 28 and October 1, 1974. Also enclosed is a more detailed statement concerning this matter which was broadcast from 11:00 P.M., October 2, 1974 to 9:00 A.M., October 3, 1974 at frequent intervals.

Copies of these materials are being sent to all parties to the proceeding. Should there be any questions concerning the above, please contact the undersigned.

Very truly yours

Howard J. Braun

Howard J. Braun

Arthur Ginsburg, Esq.
Assistant Chief
Complaints and Compliance Branch
Federal Communications Commission
Washington, D.C. 20554

cc: Milton Gross, Esq.
Joseph Volpe, III, Esq.
Samuel Miller, Esq.
Charles M. Firestone, Esq.
Ms. Kristen Booth Glenn

WNCN
104.3 FM

A Starr Group Station

2 West 45th Street New York NY 10036 212/867 6171

A 123

October 3, 1974

Mr. Arthur Ginsberg
Assistant Chief
Complaints & Complience Branch
Federal Communications Commission
Washington, D.C

Dear Mr. Ginsberg:

Here is additional information concerning the fairness doctrine controversy with WNCN in New York City.

We have attempted to continually inform the WNCN listening audience, on the progress of our attempts to find another radio station to pick up the classical format.

In addition, we have informed the WNCN audinece of the petitions by the opposition groups and their attempts to secure a stay.

We have also broadcast in our news programs information concerning Starr Broadcasting's filings with the F.C.C. concerning the petitions of groups opposed to the format change

You have in your possession copies of statements by the staff, and I am enclosing the latest statements that were broadcast on September 28, and October 1, 1974.

Cordially,

Allan J. Eisenberg
Vice President/General Manager

AJE:ml
Enc.

A 124

WNCN
104.3 FM

A Starr Group Station

2 West 45th Street New York NY 10036 212/867 6171

SEPT. 28

This is Allan Eisenberg Vice President of Starr Broadcasting.

As previously announced WNCN plans to change its classical format on October 5th.

Efforts by WNCN to obtain funding for the classical format to be moved to either a non-commercial or public supported station, has resulted in over 500,000 dollars in pledges.

WNCN has received numerous complaints concerning its change in format, however, some others have commented favorably.

The WNCN Listeners Guild and The Classical Music for Connecticut Committee, has filed a petition with the Federal Communications Commission asking for a stay in the WNCN format change.

Responses by Starr Broadcasting to these petitions will be filed with the Federal Communications Commission in the coming week.

WNCN
101.3 FM

A Starr Group Station

2 West 45th Street New York NY 10036 212/307 6171

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October 1, 1974

As previously indicated WNCN proposes to change its format October 5th.

The response received by WNCN, has been overwhelmingly in favor of retention of the classical format.

Petitions have been filed with the Federal Communications Commision for a stay in the format change, by the WNCN Listener's Guild of New York and the Classical ~~Music~~ RADIO for Connecticut Committee.

Responses to these petitions ~~has~~ have been filed with Starr Broadcasting, and further responses will be filed this week with the Federal Communications Commission.

The efforts by WNCN to obtain the co-operation of another New York Station to pick up the classical format, ~~has~~ so far proven unsuccessful. WBAI-FM has declined to carry the 24 hour classical format.

Negotiations are still being conducted with other New York City stations, to find an outlet for the WNCN classical programming.

As reported on September 28, over $500,000 in pledges has been received to be used by a non-commercial station in connection with the "Save WNCN Committee".

This morning a group protesting the change in WNCN's format picketted in front of the entrance to WNCN at 2 West 45th Street. They were accompanied by a Woodwind ~~Quartet~~ Quartet.

10/1/74

4 PM - BA
5 PM - RA
6 pm - OB
7 pm - OB
8 pm - OB

~~Expos~~ NO NEWS
10 pm - OB
11 pm

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Broadcast from 11:00 to 11:02 to 11:03 at request of [illegible]

This is a news report to the listeners of WNCN. We have already reported the proposed change in programming by Station WNCN effective October 5th from its present classical music format to a different one. In recent weeks, the station has received voluminous correspondence and many petitions from listeners objecting to the proposed format change primarily on the basis that WNCN is the only New York City station broadcasting a mix of classical music selections twenty-four hours per day. In additon to these complaints, two groups, The WNCN Listeners Guild and Classical [illegible] for Connetticut have filed pleading before the FCC requesting, among other things, that the commission prohibit a change in format and that it stay any such change during the period that the commission considers the merits of the various filings by these two groups. In addition, the Guild alledges certain character deficiencies in the licensee and questions its qualifications to remain a licensee.

Starr-WNCN Inc., the licensee, has filed letters and pleadings with the FCC opposing the petitions of

these two groups. The thrust of Starr's submissions are that the change in format is necessitated by financial considerations, since the classical music format over the past seventeen months has not proved to be financially viable. Starr also stated that the decision to change a musical format during its license term is legally within the sole discretion of the licensee. The commission today issued a memorandum, opinion and order denying the motion to stay filed by the two groups. The commission, in its order, agreed with Starr's contention that primary responsibility for determining the format of a station rests in the judgement of the licensee. The Commission also stated that it had grave doubts whether it had the power to order Starr to change its format in view of the prohibition of government censorship contained in section 326 of the Communications Act.

On October 1 the Guild filed a notice of appeal for review in the U.S. Circut Court of Appeals for the District of Columbia circut. We are advised that a request for a stay of the action taken by the Commission today will be filed with the same court by

The Guild on October 3rd.

As has been previously reported by WNCN, a committee selected by the licensee [redacted] is attempting to secure the cooperation of another FM station in the city to maintain the WNCN record library and to carry the classical music programming which will be suspended by WNCN on October 5th. The committee has also requested pledges for financial contributions to help fund the operation of this programming over a non-commercial station. Pledges in excess of over $500,000 have already been received by the committee. However, to date, no firm commitment has been received by another licensee to carry the WNCN classical music format although negotiations are continuing. The Guild has taken the position that the WNCN classical music format could be preserved by various methods such as supporting donations by listneners or by changes in WNCN's procedures in the sale of time. WNCN has been picketed for the last several days by listeners

opposing the proposed change in format, WNCN will attempt to keep its audience fully apprised of the factual developments in this matter. In the event that any listeners are interested in making contributions to the Committee formed to obtain funding for the WNCN format over a non-commercial station, they may do so by contacting: Save WNCN, 2 W. 45th Street, NY, Ny 10036.

In the event that listeners wish to support the position of the Guild or Classical Radio, the addresses of these two organizations are: 663 5th Avenue, New York, NY 10022 for the Guild and 944 Washington Building, Washington D.C. for Classical Radio. It is assumed that listeners wishing to receive further information on the views expressed by these two organizations may do so by contacting them directly.

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REPLY OF WNCN LISTENERS' GUILD TO STARR OPPOSITION

Dated October 21, 1974

Pages 24-29
Exhibits B,N,O, and P

In assessing the financial ability of the proposed transferee, the Commission thus was wrongly led to believe that Starr was investing its own equity of $1,000,000 and incurring a debt service on only $1,000,000. But in fact, every penny of the purchase price was borrowed, as we now learn from Starr's opposition.[57/] This $1,000,000 equity and debt service differential, which now looms so large in Starr's assessment of its "losses" on WNCN,[58/] was a material fact whose existence might well have led the Commission to deny the transfer application on financial qualification grounds.

We believe that the knowing failure to supply the Commission with this material fact, required by the application itself, now compels Commission action under §312 to reopen the transfer proceeding and in connection therewith or independently to revoke Starr's license to operate WNCN.

IV. OTHER SERIOUS VIOLATIONS OF COMMISSION RULES CALLING FOR §312 SANCTIONS

A. Public Access Files

One of the most blatant violations of Commission rules and regulations committed by Starr has been its continued failure to place

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57/ See Starr Opp., p. 15, ¶(a) ("In this case $1 million was borrowed by the parent company from the Chemical Bank, and the second million was borrowed by Starr from the Sellers").

58/ Including Exhibit 5, which shows $93,029 in interest on the note to the Sellers, $128,128 on interest on the Chemical Bank loan.

the large volume of protest letters inundating the station in its public access files (See Guild Pet. Section III(4), pp. 48-49). In addition, Starr has now refused a Guild member the right to obtain copies of public file material.

Starr's own documents tell us how voluminous this correspondence was;[59] yet as of October 16, it simply was not to be found in the public file.[60]

Further, letters numbering around 20,000 - 25,000 were received by the "Save WNCN Committee". Many of these were not pledge letters, but cries of outrage.[61] These letters are also not now in the public file.

Finally, the pledge letters themselves are inexcusably and unlawfully absent from the public files. Starr apparently would argue that these letters, received at the station and expressing

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59/ In its own "news reports" broadcast on September 28 - October 3 (transcripts of these broadcasts were submitted to the Commission as Exhibits to Starr's October 10 letter to Arthur Ginsberg re the Guild's fairness complaint; we attach them hereto as Exhibit Q for the Commission's convenience). These complaints were "numerous", September 28, "Overwhelmingly in favor of retention of the classical format", October 1, and constituted "voluminous correspondence and many petitions from listeners objectiong to the format change," October 2-3.

60/ See Affidavit of Jess Brodnax, Ex. N. Mr. Brodnax found a total of approximately 500 listener letters of which less than half were dated after the announcement of format change. Simple comparison with the letters on file at the FCC showing copies to WNCN will demonstrate that far more than 250 format change protests have been sent to the station. Our guess would be that "voluminous" means in the thousands. If these letters are not in the public file, where are they? See Schack aff., Guild Pet. Exh. J13, indicating that all protest mail after August 31 was turned over to "Buckley's group".

61/ Brodnax Aff., supra.

negative opinoins about the proposed change in format, somehow belong not to it, or to the station, but to Mr. Buckley himself.[62] These arguments, if indeed they are made, cannot be in good faith.

The letters received by the Save WNCN Committee are apparently still in the private office of Mr. Buckley. This kind of wilful violation of Commission rules was bad enough before the Guild's petition was filed. Its continuation, after notice, and in express violation of Starr's subsequent promises to the Commission,[63] requires invocation of the strictest sanctions of §312 -- the revocation of Starr's license.

62/ We do not have to consider what the situation would be if letters to an independent group were mistakenly sent to the station. The "Save WNCN Committee" was entirely the creation of William Buckley, the Chairman of the Board of Starr, and Starr cannot now be heard to deny responsibility for the mail which it and its agents actively solicited on free station time 'for delivery to the station' and in the name of the parent company's chief executive.

63/ In its Opposition, Starr submitted an affidavit by Station Manager Paul Wachsmith (Starr Opp., Exh. 12) which reported that all of these letters were "delivered to Mr. Buckley for tabulation" that those not containing pledges or checks were "being separated out and put in the public file", that it "was not deemed appropriate to put the remainder of the letters -- in the public file" but that 500 letters were being chosen at random, without the name of the pledger disclosed and were being placed in the file. Id. None of this, promised the Commission on October 3, 1974, has been done. See Brodnax aff. Ex. N, supra. Starr's decision "deeming inappropriate" an action required by Commission Rule 73.1202(f) and deciding to deliberately violate that rule is totally inconsistent with actions of a responsible Commission licensee. Its failure now to allow members of the public to copy public file material (See Brodnax aff.) further corroborates this irresponsible licensee behavior.

B. Failure to Meet Responsibilities to the Public During Controversy Involving License Self-Interest

We have elsewhere argued both the weakness and disingenuity of Starr's response[64] and the mistaken decision of the Commission staff as to our fairness complaint.[65] This matter is now on appeal to the Court in WNCN Listeners' Guild v. FCC. We note however, the following subsequent events, which raise new questions of both fairness doctrine per se and broader public interest questions.

Listeners wishing to protest or to contact the Guild for information have been told by station personnel that they don't know where the Guild is, or what its telephone number is, but have instead been told to send petitions to the station.[66]

News broadcasts as to the events in Court and the Commission have been inaccurate and misleading[67] leaving the audience in a complete state of confusion as to the "controversial issue" of the future of classical music programming on WNCN.

64/ Particularly the incomplete set of transcriptions it submitted, and the subsequent Wategatesque erasure of all evidence. (See Shack aff., submitted by unopposed Motion of October 2.)

65/ See Guild Memorandum to the Court, October 10, 1974, at 43-44. Stressing the Commission's total failure to address the fairness standard to be applied where the licensee is self-interested in the controversy, the incomplete transcripts, and the logging as "editorials".

66/ Affidavit of Barbara Stern, attached hereto as Exhibit O. Sending such material to the station would, no doubt, have been fatal, given its consistent practice of sending such mail to Mr. Buckley's office. See fn. 60, supra.

67/ For example, the Court issuing the stay is described as the "District Court". Parties are described as having appeared or having to appear in court, suggesting hearings, argument, or trial -- when nothing has occurred but the filing of papers. The specific terms of the stay "until further Court order" were never explained, causing both listeners and announcers to believe erroneously that it would automatically dissolve on Thursday, October 10.

Finally, while the station has ceased to broadcast station editorials on this issue, it has permitted similar material, including vitriolic attacks on the Guild, to be aired in the guise of regular programming.[68/]

Whatever the context, WNCN's listening audience continues to hear essentially only one side of an issue which is, and has been, nothing if not controversial.[69/] No Guild member has yet been allowed to appear on the station, been quoted by the station in its "newscasts", or had any of his or her views specifically mentioned on WNCN.

At the same time, the station has engaged in what one listener calls "deliberate sabotage" of its signal and equipment[70/] to attempt to turn off its audience. As she states, WNCN has been broadcasting monaurally, and equipment breakdowns are common. These "coincidences" alone call for immediate Commission investigation.[70a/]

68/ Bill Watson, known to be hostile to the Guild and its efforts, normally broadcasts from 11 PM to 6 AM on Friday-Saturday nights. the same time spot is filled during the regular (Sunday-Thursday) nights by Harry Fleetwood. When Fleetwood recently left for a three week vacation, Station Manager Paul Wachsmith hired Watson to substitute. Watson has since used that time to make repeated attacks on efforts to save the WNCN format and to denigrate those who have and are engaging in such attempts. Affidavits to this effect will be forthcoming.

69/ The nature of at least part of the controversy is set out in Mr. Buckley's own article, (Starr Opp., Exh. 7) and its continuing viability as an issue of public interest is attributed to by, e.g. the recent editorials in the New York Times (Exh. B, supra) and other print and broadcast media -- national and local.

70/ See letter of Judith Voorhees, attached as Exhibit P hereto.

70a/ See, e.g. 47 U.S.C. §312(a)(3) which provides for revocation when a licensee willfully or repeatedly facts to operate substantially as set forth in its license.

CONCLUSION

This has not been, nor was it meant to be, an exhaustive discussion of all issues raised by the materials submitted in this case to date.[71] Those issues presented in our original petition and not specifically discussed again here are, of course, preserved for the hearing.

The importance and seriousness of the issues presented, the remedies sought, and the abundance of conflicting data now before the Commission can only compel the conclusion that substantial and material questions remain regarding the public interest merits of Starr's continued operation of station WNCN. An evidentiary hearing must be held on Starr's 1973 assignment, future renewal, or present revocation of license.

Respectfully submitted,

Kristin Booth Glen /FR

Kristin Booth Glen
30 E. 42nd Street
New York, New York 10017

Frank W. Lloyd

Charles M. Firestone

Citizens Communications Center
1914 Sunderland Place, N.W.
Washington, D.C. 20036

October 21, 1974

Counsel for WNCNC Listeners' Guild

71/ We strongly urge the Commission to examine the affidavits and exhibits we have submitted today, and to compare them with information supplied by Starr. Such consideration leads to the inescapable conclusion that the truth in these conflicting matters can only be obtained in "the crucible of an evidentiary hearing". WEFM, supra at 31.

The New York Times

Founded in 1851

ADOLPH S. OCHS, *Publisher 1896-1935*
ARTHUR HAYS SULZBERGER, *Publisher 1935-1961*
ORVIL E. DRYFOOS, *Publisher 1961-1963*

ARTHUR OCHS SULZBERGER
Publisher

JAMES RESTON, *Vice President*
JOHN B. OAKES, *Editorial Page Editor*
A. H. RASKIN, *Assistant Editorial Page Editor*
A. M. ROSENTHAL, *Managing Editor*
SEYMOUR TOPPING, *Assistant Managing Editor*
MAX FRANKEL, *Sunday Editor*
JACK ROSENTHAL, *Assistant Sunday Editor*

CHARLOTTE CURTIS, *Associate Editor*
CLIFTON DANIEL, *Associate Editor*
TOM WICKER, *Associate Editor*

Bach v. Rock

Bach is still holding the fort against the rock disk jockeys poised for an assault upon WNCN-FM in New York. The attempt by its owners to change the format of the station—one of the few on the radio dial playing classical music—is now before the United States Court of Appeals in Washington.

The contending petitioners and the Federal Communications Commission have filed memoranda that will determine the future sound of WNCN. Among other precedents, the Federal court is considering the effect of a parallel case involving a Chicago station, WEFM, where the F.C.C. had been ordered to reconsider a similar change in musical format. The New York station is now operating under a temporary stay as a result of protests by listener groups.

The issue is not one of public or government "telling" a station what to broadcast. Rather, it is a question of compliance with the original promise by the station's management to continue classical music programing. The Court of Appeals decision in the WNCN case will have an important impact on the diversity of musical fare metropolitan listeners can find on the publicly franchised airwaves.

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AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

JESS W. BRODNAX, being duly sworn, deposes and says:

I am a volunteer at the WNCN Listeners Guild and I make this affidavit in response to certain facts alleged by Starr Broadcasting Group, Inc. (Starr) in its Opposition to the Petition of the WNCN Listeners Guild.

In that petition the Guild alleged that Starr had failed to keep communications from listeners in its public file, as required by FCC regulations. This was particularly true of communications received during the time of the pledge campaign orchestrated by Starr through its chairman, William F. Buckley, Jr. In its Opposition, Starr claimed that no such violation occurred and reported that the letters which came in during the pledge drive were being "processed" and would be placed in the public file.

On the morning of October 16, 1974 I visited the station's office at 2 West 45th Street, New York City, and asked to see the listener mail in the station's public file. The receptionist referred me to a file cabinet which contained approximately 500 letters. My examination of these letters indicated that more than half of them were dated prior to August 28, 1974, the date on which the format change was announced. The file was divided into "Letters from Listeners", "Letters of Protest" and "Letters of Protest to

Format Change". The latter contained approximately 35 letters.

When I asked to see the letters which had come in during the pledge campaign, I was first told that they were in the file but when I examined the file and ascertained that they indeed were not there, I was told that they were unavailable because they were at Mr. Buckley's office.

In its Opposition, Starr stated that it intended to place 500 sample pledge letters in the file with the pledgee's names and addresses blacked out. I did not observe any such letters in my perusal of the files.

I requested permission to copy approximately 14 letters, as I understood was my right under FCC rulings. This permission was initially granted by the receptionist but she subsequently left the reception area and upon returning with one, Pat Sweeney, denied me the right to make any copies.

I was active as a volunteer in the initial Buckley pledge drive when it was being run out of 101 Fifth Avenue. In that capacity I read many of the letters sent to the Buckley Committee, including a number which did not contain pledges, but which merely protested the format change. At the end of the pledge drive, at Mr. Buckley's request, I delivered all these letters to Elise Topaz. In examining the files this morning I found none of the letters of general protest which I previously read and delivered to Ms. Topaz in the "Protest" or "Protest to Format Change"

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sections of the public file.

Based on my knowledge of the pledge campaign, the letters received and my examination of the public file this morning, it is clear that the letters which came in during the period of the campaign have still not been placed by Starr in its public file pursuant to FCC regulations and that this includes not only the actual pledge letters which Starr seeks to "protect" but letters of protest which unquestionably belong in the file.

Sworn to before me this
16th day of October, 1974.

Jess W. Brodnax

KRISTIN BOOTH GLEN
Notary Public, State of New York
No. 31-4513004
Qualified in New York County
Certificate filed in New York County
Commission Expires March 30, 1975

Kristin Booth Glen

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

BARBARA C. STERN, being duly sworn, deposes and says:

1. On October 4, 5 and 6, 1974, I circulated petitions protesting the format change of WNCN and seeking public hearings by the Federal Communications Commission which would lead to a prohibition of such change.

2. On October 6, 1974, I had obtained approximately 250 signatures on such petitions.

3. When I attempted to deliver such petitions to the WNCN Listener's Guild, I discovered that my attempted delivery was to an incorrect address.

4. I thereupon telephoned WNCN at 867-6171 in New York at approximately 3:30 P.M. on October 6, 1974. The telephone was answered by a man who identified the number as being that of WNCN, but did not identify himself.

5. I asked him how I could get in touch with the WNCN Listener's Guild. I asked for their address or

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telephone number. He replied that he was all alone and that he didn't know how to reach the WNCN Listener's Guild.

6. I explained that I had been circulating petitions directed to the Federal Communications Commission, and that I wanted to get them to the WNCN Listener's Guild. I pointed out that I was then one block from the station's offices.

7. He said that I should not deliver the petitions. He suggested that I mail the petitions to the offices of the station, at 2 West 45th Street, New York, New York, and promised that they would "take care of them".

8. Since he had denied knowledge of the address of the WNCN Listener's Guild, I did not deliver the petitions to the offices of the station but instead went home, found the address of the WNCN Listener's Guild, and telephoned the WNCN Listener's Guild for instructions. Pursuant to such instructions, I mailed the petitions to Washington that night.

Barbara C. Stern

BARBARA C. STERN

Sworn to before me this
8th day of October, 1974.

Richard L. Schneider

RICHARD L. SCHNEIDER
Notary Public, State of New York
No. 24-6006230

EXHIBIT P

A 143

Judith Voorhees
1043 Maurice Avenue
Rahway, New Jersey

October 16, 1974

F.C.C. Complaints
Bureau
Washington, D.C. 20554

Sirs;

Freedom of choice is what makes this country different--and better--than any other. This includes freedom of choice and access to a variety of programming in radio too.

In the N.Y. Metropolitan area--one of the most populous in America--this freedom and access are threatened.

The Starr Broadcasting Company purchased a powerful radio station a year and a half ago. It is WNCN, which is the ONLY station broadcasting classical music exclusively in the area. Furthermore, it does so 24 hours a day, serving New York, New Jersey, and Connecticut, plus Westchester and Long Island. Starr Broadcasting appears only to have seen the station as the proprietor of a very strong signal. In callous and flagrant violation of the listening rights of WNCN's listeners, (And in our country, the PEOPLE own the airwaves--broadcasters are LICENSEES who USE federally-assigned frequencies by PUBLIC CONSENT, so long as their purposes SERVE the public), Starr has broken its promise to maintain the classical programming of WNCN for their own narrow benefit. Let the public be damned!

Starr Broadcasting has stated publicly that they are "reluctantly" changing the format for "enonomic" reasons. While a rock station may be more lucrative, to be sure, WNCN cannot possibly be a losing proposition. No station has more enthusiastic listener support. Over half a million dollars was raised in two weeks on behalf of the existing format. And ad hoc listeners' groups are suing, picketing, and working to save their station. Anybody who cannot sell this market to advertisers isn't trying!

Presently, nothing seems to work at the station. The announcers complain on the air of faulty cartridges and broken turntables. For the last few days, the station has been broadcasting monaurally, using a smaller, less powerful auxilliary transmitter. I suggest this is deliberate sabotage and an attempt to cut the station off from a portion of its constituency of 300,000 listeners to weaken the organizations opposed to the format change and generally harass the classical listeners. If so, this is a violation of the station's license.

As a citizen member of a listening minority, I look to the FCC as my ombudsman in this matter and trust you will take the necessary steps to assure the continuance of our only source of full-time classical radio.

144

WNCN Dist

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re	)
	)
Petition for Revocation of License of	)
STARR BROADCASTING GROUP, INC.	)
to operate	)
Station WNCN-FM, New York, New York,	)
or	)
Immediate Submission of Renewal	)
Application	)
and	)
Resolution of Fairness Doctrine	)
Complaint and Other Relief	)

RECEIVED
NOV 4 1974
F. C. C.
OFFICE OF THE SECRETARY

APPLICATION FOR COMMISSION REVIEW OF BROADCAST BUREAU FAIRNESS COMPLAINT DECISION UNDER DELEGATED AUTHORITY AND IMMEDIATE RELIEF

The WNCN Listner's Guild, pursuant to Section 1.115 of the Comission's Rules, hereby applies to the Commission for review of the October 3, 1974 ruling of the Broadcast Bureau, taken under delegated authority, separately ruling upon the Guild's fairness doctrine complaint contained in its September 23, 1974 Petition for Revocation of License etc. of WNCN-FM.

The Guild has appealed the Broadcast Bureau's action to the Court of Appeals for the District of Columbia Circuit (WNCN Listeners' Guild v. FCC, Nos. 74-1925, 74-1926), arguing that the Bureau's decision can be considered a final agency action for purposes of review under the facts and circumstances of this

case.[1/] The Court has not yet ruled upon the Guild's appeal on the merits, nor has it addressed this procedural point. At minimum, therefore, the Guild files this Application for Review to protect its rights to full consideration of its fairness complaint either at the Court or agency level.

But this is not a pro forma application for review filed merely to show exhaustion of administrative remedies. The Guild seriously believes that the Broadcast Bureau gravely erred in failing to consider several key contentions of the Guild in issuing its October 3 ruling. The Guild believes that these errors will have adverse precendential effects on Commission policies in the area of both format changes and fairness doctrine obligations generally.

The Courts ultimate reversal of the Commission's staff decision, which we expect to occur, would afford ultimate vindication of the legal position and principles urged by the Guild. But we wish to give the Commission every opportunity to itself vacate its staff's decision and to re-establish the integrity of its own fairness doctrine processes, which are severely undercut by the October 3 ruling. In addition, the Guild urges that immediate relief is warranted by the Commission on this complaint because the Bureau's decision has led to continued conduct on the part of the licensee that is adverse to the public interest and destructive of core fairness doctrine concepts.

1/ See Petition for Rehearing, Suggestion of En Banc Consideration, and Request for Expedited Action, n. 9 (October 29, 1974).

CERTIFICATE OF SERVICE

I, Joyce Dow, certify that I have this 4th day of November, 1974, caused to be delivered via First Class Mail, a copy of the foregoing "Application for Commission Review of Broadcast Bureau Fairness Complaint Decision Under Delegated Authority and Immediate Relief", to the following:

Howard Jay Braun, Esq.
Fly, Shuebruk, Blume & Gaguine
1221 Connecticut Avenue, N.W.
Washington, D. C. 20036
Counsel for Starr Broadcasting Group, Inc.

John Coleman
Classical Radio for Connecticut
153 Spectacle Lane
Wilton, Connecticut 06897

Joyce Dow

I. FAILURE TO DEAL WITH LICENSEE SELF-INTEREST IN THE CONTROVERSY

The most glaring deficiency in the Bureau's decision is that it did not address the Guild's principal contention: that as to an issue in which a licensee is itself personally and financially self-interested, a higher standard of good faith discretion is required in judging its refusal to air contrasting viewpoints. As to such issues, a stronger showing is needed from the licensee that it has made a "reasonable" judgment that no controversial issue of public importance is presented by its programming.

As we clearly noted in our pleadings in this issue, (See, e.g. Guild September 30 Reply, pp. 6-7), this case involves the question whether the fairness doctrine has any life at all. In the past, as we noted, the Commission consistently regarded issues in which a licensee personal finances are at stake as requiring a higher fairness showing, citing Springfield Television Broadcasting Corp., 4 R.R. 2d 681, 685, ¶9 (1965) and cases cited therein. The Guild noted:

> This case, then, is decidedly different from NBC v. FCC, supra, D.C. Cir. No. 73-2256 (Pensions). In Pensions the court of appeals held that the Commission erred in failing to accord proper leeway and deference to the licensee's characterization of the controversial issue of public importance. While even under the Pensions standard, the Commission cannot reasonably find that WNCN has reasonably and in good faith

exercised its discretion under the fairness doctrine, this case is at the other end of the spectrum. WNCN's editorials were not evidence of a licensee performing its legitimate journalistic role in an investigative documentary, but rather a licensee propagandizing its own solution to a problem in which it has a personal and financial stake.

In investigative journalism efforts, doubts should be resolved in the licensee's favor. NBC v. FCC, supra. Where a licensee has a personal interest, on the other hand, doubts must be resolved in favor of the public's right to hear contrasting viewpoints. Springfield Television, supra. This contention was nowhere addressed in the Bureau's decision. This clearly evidences a failure to give the Guild's primary argument a "hard look".

The Bureau's failure to take a hard look at or deal in its opinion with the Guild's contentions is also apparent in its treatment of at least three other issues. While it purported to consider the Guild's pleadings in this matter, citing all of the above-mentioned pleadings, the October 3 decision nowhere mentioned or dealt with, inter alia, the Guild's charges as to:

> (1) The material conflicts between the unverified transcripts of editorial announcements submitted with Starr's September 27 opposition and those submitted by the Guild with its Petition, verified by affidavit submitted October 2, 1974.

(2) The fact that those announcements were logged by the licensee as "editorials".

(3) The fact that many of the announcements themselves contained statements that showed that the licensee was well aware that its format change was a controversial issue of public importance, and that it was advocating one viewpoint as the only way to deal with that controversy.

II. FAILURE TO RESOLVE QUESTION OF ADEQUACY AND COMPLETENESS OF STARR'S RESPONSE, AND LACK OF CANDOR SHOWN THEREBY

The Guild raised several issues as to the adequacy of Starr's response to its fairness complaint. It noted that Starr's September 27 response consisted of an unsworn, unverified letter with several attachments purporting to be all of the editorial comments aired by WNCN on the subject of the planned format change and supporting the "Save WNCN" plan to transfer the format to another station.

Apart from the question of whether this filing met the Commission's procedural rules (Guild September 30 Reply at pp. 3-4), the Guild protested that these transcriptions were incomplete in material respects. They did not, it noted, conform to the transcriptions of a sampling of 18 WNCN editorial announcements attached by the Guild to its

Petition, which were supported by affadavit as monitored by the Guild from WNCN. (Id. at 4, 11-12). The Guild noted that these omissions were serious, as to the validity of the fairness complaint itself, because many of the omitted announcements most directly presented WNCN's plan as a viewpoint on the overall format change issue. But it also noted that this raised equally significant lack of candor issues that went to the basic question of the licensee's exercise of "good faith discretion". (Ibid.)

The Bureau deals with none of these questions in its opinion.

III. FAILURE TO DEAL WITH THE ISSUE OF LOGGING AS "EDITORIALS"

The Guild submitted specific evidence that the announcements in question were logged as "editorials" (Id. at footnote, p. 13; Exhibit A-4). The Guild raised this issue not only to show that these messages, by Starr employees and the Chairman of its Board, were in fact corporate and station viewpoints on a controversial issue. It also used this fact to show that Starr knew them to be so, and were lacking in candor in representing to the Guild and the Commission that they were not, and thus could not be assumed to be acting with the "good faith" and "reasonableness" required of the licensee in the

fairness area. Not only did the Bureau's ruling not even address this question; throughout the operative section of its decision (p. 3) it accepted Starr's characterization without and referred consistently to the "announcements" rather than to "editorials" or "editorial announcements".

IV. FAILURE TO TAKE A HARD LOOK AT THE TRANSCRIPTIONS SUBMITTED BY STARR AND THE GUILD

We will not repeat here all of the arguments put forth in our prior pleadings as to the evidence in the WNCN announcements -- both those submitted by Starr and those submitted by the Guild -- that showed that Starr under any standard of licensee good faith -- and particularly not under the higher standard of licensee self-interest -- could not reasonably believe that it was not airing a viewpoint on a controversial issue of public importance. (E.g., Guild September 30 Reply at pp. 9-12).

It is at least evident from the Bureau's opinion that it did not take a hard look at these transcripts, citing only one of them (p. 1) and accepting Starr's view that they only "touched upon . . . incidentially" a controversial subject and "simply took note of WNCN's change of format". (p. 3). Even

this single cited announcement contradicts this view, but reading all of them together totally destroys this disingeneous approach.

We urge the Commission to itself reread the transcriptions submitted, not for a minute by minute content review of a journalistic exercise, but merely to on an overall basis determine whether or not on the basis of this overwhelming editorial effort Starr could reasonably have felt it had no duty to air contrasting views of the Guild or other appropriate spokespersons on alternative ways to preserve WNCN's unique format.

V. WNCN HAS CONSISTENTLY DEPRIVED ITS AUDIENCE OF ACCESS TO CONTRASTING VIEWPOINTS SINCE THE BUREAU'S DECISION

Since the Bureau's decision on October 3, the controversy over WNCN's change of format has continued to rage throughout New York, New Jersey, Connecticut, and even on a national basis. The Guild has submitted in intervening pleadings to the Court and the Commission evidence of this consistent controversy, including over 40,000 petition signatures and support from the New Jersey Governor and New York city and state officials.

But the WNCN audience has been consistently deprived of hearing the viewpoints of those opposed to the format change, and seeking relief before this Commission, on the very medium to

which they listen almost exclusively, as Starr's own research shows.

Finally, rebuffed in every attempt to obtain air time for these contrasting viewpoints from Starr on a public service basis, the Guild on Saturday, October 26, delivered to Starr a letter offering the purchase a one-hour program to present its viewpoint.

On Monday, October 28, Starr's station manager for WNCN, Alan Eisenberg, told a Guild representative that Starr would air the program on Wednesday, October 30, the last scheduled night for the existing classical format, and therefore the last night the existing WNCN audience could hear those views. The Guild prepared such a program, which consisted of a history of the station, the Guild, its legal position, its volunteer effort, and what listeners could do about the format change. The Guild had agreed that the program would not contain any defamatory material, and would be submitted to Starr for review prior to airing.

On Wednesday, at a meeting between representatives of the Guild, "Save WNCN" and Starr, Starr stated that it would not change its format until at least the following night. The Guild then asked if it could have its program aired that night, so

promos could be aired in advance. Peter Starr then said he personally wanted to review the tape.

Later that day, the Guild received a call from the Vice President of Starr, stating that under no circumstances would the tape be broadcast, and there was no use delivering it to Starr. Nevertheless, on the following day, Thursday, October 31, the Guild attempted to deliver the tape and a check for the going rate for a one-hour program to WNCN, and WNCN refused to accept either. An affadavit is forthcoming on these events and will be filed with the Commission as soon as feasible.

CONCLUSION

For the above reasons, the Guild urges that the Commission review the Bureau's erroneous ruling under delegated authority on an expedited basis, and grant immediate relief to the Guild. The Guild has attempted to exhaust all resources in attempting to gain voluntary cooperation from Starr on this issue. But, as shown above, it has met nothing but total refusal to recognize any licensee responsiblities to avoid the appearance, if not the clear fact, of acting solely to protect its own financial self-interest in a controversy with which it is so intimately connected.

Respectfully submitted,

Kristin Booth Glen
30 E. 42nd Street
New York, New York 10017

Frank W. Lloyd, III

Charles M. Firestone

Citizens Communications Center
1914 Sunderland Place, N.W.
Washington, D. C. 20036

Counsel for WNCN Listener's Guid

November 4, 1974

FOR RESPONSIVE MEDIA:
CITIZENS COMMUNICATIONS CENTER
1914 SUNDERLAND PL., N.W., WASHINGTON, D.C., 20036 (202) 296 4238

A 156

November 5, 1974

Vincent Mullins
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

In Re: Petition for Revocation of License of Starr Broadcasting to Operate WNCN-FM, New York, New York

Dear Mr. Mullins:

Please associate the attached affidavit of Robert J. Schack, President of the WNCN Listeners' Guild, with the Guilds' "Application for Commission Review of Broadcast Bureau Fairness Complaint Decision Under Delegated Authority and Immediate Relief," filed yesterday, November 4, 1974, with the Commission, in the above-referenced matter.

This affidavit, referred to and substantiating the allegations in the "Application for Commission Review," arrived from New York too late to be included with the "Application" for filing yesterday. The Guild regrets this delay.

Respectfully submitted,

Frank W. Lloyd

Frank W. Lloyd

Counsel for WNCN Listeners' Guild

CC: Howard Braun
John Coleman

A 157

AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ROBERT J. SCHACK, being duly sworn, deposes and says:

I am president of the WNCN Listeners' Guild, 663 Fifth Avenue, New York, New York 10022.

On Saturday, October 26, 1974, at or about 9:50 a.m., I personally hand delivered to the WNCN studies at 2 West 45th Street, New York, New York, a letter applying for a program on WNCN. The letter read as follows:

"WNCN LISTENERS GUILD
663 Fifth Avenue
New York, N. Y. 10022
(212)-675-8630

October 25, 1974

To Whom It May Concern:

The WNCN Listeners' Guild hereby formally applies for an hour long program to be broadcast on Tuesday evening, October 29, 1974, from 8 to 9 p.m.; for six (6) one minute spot announcements to be broadcast one each on Monday and Tuesday, October 28 and 29, 1974, between 7 and 9 a.m., between 2 and 4 p.m., and between 5 and 7 p.m.; and for one (1) one minute spot announcement to be broadcast on Monday, October 28, 1974, between 10:30 and 11 p.m.

Payment for said program and announcements is hereby tendered.

The program will consist of commentary and music. The announcements will contain music and information on the forthcoming program. The program's commentary will deal with the Guild's position on the controversial issue of WNCN's future and will, of course, be treated in a tasteful and responsible fashion.

The Guild will either supply written announcements for the station's announcers to read or a prepared tape, according to our mutual convenience and agreement. The Guild will either supply a tape of the program in advance or produce it live in the station's studios, according to our mutual convenience and agreement.

Due to the short time available to produce the announcements and program in final form, the Guild would appreciate a prompt response. If you have any questions, the Guild's officers will be available twenty-four hours a day to you by calling either the above telephone number (an automatic answering machine will record your call if we are not in the office) or 988-6393 this weekend.

Yours sincerely,

Robert J. Schack
President

Starr-WNCN, Inc.
2 West 45th Street
New York, N. Y. "

At the studios the announcer, a Mr. Ron Webb, came to the door and spoke briefly with me. He stated that there were no management personnel at the station at that time, that he could not give me the home telephone numbers for them, but that he would himself call them as soon as possible and read my letter to them.

At or about 11:15 a.m. on the same day I telephoned the station and spoke again with Mr. Webb, who informed me that he had contacted the management and had been told to inform me that Mr. Allan Eisenberg, the general manager for WNCN, would discuss the proposition with me on Monday, October 28, 1974.

Accordingly on Monday I spoke with Mr. Eisenberg, at or about 10:30 a.m., who stated that he could not give me a definite answer at that time, but would have to contact his superiors at Starr Broadcasting Group in New Orleans. I again spoke with Mr. Eisenberg that afternoon, at or about 4 p.m., and he said that WNCN would broadcast our program if he, after reviewing it, felt it suitable. He emphasized that it could not contain any defamatory remarks about Starr. I assured him that the Listeners' Guild was not interested in capriciously attacking Starr or its employees, but in preserving the unique format of classical music that WNCN broadcast, and that the program would be prepared by responsible spokespersons of the Guild. He asked what the content of the program would be. I referred him to my letter and repeated that the program would present the Guild's position on the format change, ask for the support of the station's listeners, and advise them of their constitutional right to petition government, including the Federal Communications Commission, for redress of grievances. I asked him if WNCN was definitely changing its format on Tuesday night. He said that there was a strong possibility that the station would stay with its current format until Wednesday night, but that he could make no guarantees. I told him that the Guild would prefer to have the program on Wednesday night if there was any possibility the station would still be broadcasting classical music. I asked him if my information was correct that the program time would cost $200. He said yes. I offered to pay in cash or by check. He indicated that a check would be satisfactory.

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On Tuesday, October 29, Mr. Eisenberg and I again had several telephone conversations, in the course of which Mr. Eisenberg emphasized that he wanted a complete package from the Guild, a tape of the entire program including the musical selections we wanted to play, as he did not want to have a live mike in the studio while the program was on. I pointed out that he had the pecuniary control of the announcers, as he was paying them, and that he could station other personnel in the studio with the announcers during the program if he did not trust them, and told him that the Guild itself would endeavor to use whatever influence it had, if any, with the announcers to tell them that any comments they made during the program would be counterproductive from our standpoint. I also noted that he could deactivate the microphones for the duration of the program as the tape itself would contain audio cues and the only thing the announcers would have to do would be to put the records on the turntable. He still demanded a complete package.

On Wednesday, October 30, at or about 4:50 p.m., I asked Mr. William F. Buckley, Jr., chairman of the board of directors for Starr Broadcasting Group, and Mr. Peter Starr, the Group's president, if they would inform Mr. Eisenberg as soon as possible about the date they were setting for the format change, since the Guild would want its program to go on Wednesday night if the station was going off the air or on Thursday night if it was still going to be broadcasting classical music. Mr. Starr said that there was a problem about approving the program, since he personally had to listen to it

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before it could go on, but that he had to catch a plane at 6 p.m. He went on to say that if the decision was to keep the station on the air long enough to play the program, he would listen to it by telephone hookup after he landed that night and give his decision. Mr. Buckley also promised to let the Guild know when the format change would be made.

Shortly thereafter, at or about 5:40 p.m. of the same day, I received a telephone call from Richard Oppenheimer, vice-president for Starr, in New Orleans. Mr. Oppenheimer told me that Starr would not broadcast our program. He added that he had just spoken to Mr. Eisenberg and had been told that the tape had never been received at the station. I told him that I would check to see what had happened, since I thought it had been delivered, but that if it had not, I would have it delivered to the station at once. He told me not to bother, because Starr would not run the program even if it was received in the next few minutes. I asked him if there was any reason he could give for his decision. He refused to give a reason, saying only that Starr had come to this decision. I asked if he would send the Guild a letter rejecting the program, with or without a reason stated. He said that Peter Starr would have to decide if a letter would be sent.

On Thursday, October 31, I directed Mr. Matt Edwards, a member of the Guild, to deliver the tape of the program and a check for the full cost of the air time to Mr. Eisenberg at the station. On information and belief, Mr. Edwards did attempt to make delivery at the station at or about 12 noon to Mr. Eisenberg, but the receptionist at the door said Mr. Eisenberg was at lunch.

On information and belief, the receptionist also refused to accept delivery of the tape and check, stating that she had orders from the sales manager, whom she later identified as Paul Wachsmith, to make said refusal. On information and belief, Mr. Edwards told her that it was his understanding that the station's management would listen to the tape before deciding to accept or reject the program, but she responded that the decision had already been made. On information and belief, Mr. Edwards called twice that afternoon to try to contact Mr. Eisenberg, each time without success, but did not leave his name.

Robert J. Schack

ROBERT J. SCHACK

Sworn to before me this

7th of November, 1974.

Kristin Booth Glen

NOTARY PUBLIC

KRISTIN BOOTH GLEN
Notary Public, State of New York
No. 31-0070410
Qualified in New York County
Certificate filed in New York County
Commission Expires March 30, 1976

WNCN-Fairness Dkt

A 163

RECEIVED NOV 15 1974

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In Re	)
Petition for Revocation of License of STARR BROADCASTING GROUP, INC. to operate Station WNCN-FM, New York, New York or Immediate Submission of Renewal Application and Resolution of Fairness Doctrine Complaint and Other Relief	)

To: The Commission

MOTION FOR EXTENSION OF TIME
TO OPPOSE APPLICATION FOR REVIEW

Starr WNCN, Inc. ("Starr"), licensee of WQIV(FM), (formerly WNCN(FM)), New York, New York, by its attorneys, hereby respectfully requests an extension of time to December 16, 1974 to oppose the Application for Review of the Broadcast Bureau's October 3, 1974 fairness doctrine ruling filed herein by the WNCN Listeners' Guild ("Guild"). In support thereof, it is stated as follows:

1. On November 4, 1974, the Guild requested the Commission to review the Broadcast Bureau staff's October 3, 1974 ruling that

no action was warranted on the Guild's complaint that Starr had violated the fairness doctrine in connection with its operation of former Station WNCN(FM), now WQIV(FM). An Opposition thereto is due November 19, 1974. However, for reasons detailed below, Starr will need additional time to finalize that pleading.

2. As the Commission knows, since the Guild's "Petition" was filed herein on September 23, 1974, numerous pleadings have been filed both before the Commission and the United States Court of Appeals for the District of Columbia Circuit relating to the merits of the Guild's allegations. Counsel for Starr consequently have had to postpone meeting prior professional commitments in order to meet the various pleading deadlines imposed by the Commission and the Court of Appeals. Because of the present press of such prior professional commitments, which are now being fulfilled by counsel, plus the unusually heavy work load in counsel's office, counsel has been unable to finalize Starr's Opposition herein.

3. In addition, the Guild's 11-page Application for Review, as supplemented by the 6-page affidavit of its President, Robert J. Schack, raises a number of allegations. Such allegations are best answered by affidavits of Starr management personnel, some of whom are located in New Orleans, Louisiana, and New York, New York. Preparation and coordination of such affidavits

will obviously require considerable time on counsel's part.

4. Besides the above, the Guild's Application for Review refers to allegations relating to the purported fairness doctrine controversy herein, which allegations, however, are contained in various pleadings filed by the Guild. (See e.g., Guild Application for Review, pp. 4-5). Certain of these allegations also will be dealt with in Starr's Opposition. In short, substantial work will be required on counsel's part in preparing the necessary affidavits and accompanying pleading to be filed with the Commission herein. In this regard, it should be noted that the Guild has attempted to raise five separate legal arguments which it claims warrant Commission reversal of the Broadcast Bureau staff's fairness ruling.

5. On the basis of the facts outlined in paragraphs 2 - 4, supra, Starr submits that it has more than met its burden of "good cause" under Section 1.46 of the Commission's Rule warranting a grant of the extension of time requested herein.

6. There are further reasons supporting a grant of the instant request. One of the attorneys principally involved in the preparation of Starr's Opposition herein will be out of the country from November 28th to December 9th, 1974. While he already has commenced work on the preparation of Starr's Opposition, it will be virtually impossible for him

to complete that pleading prior to his departure in view of other pressing professional responsibilities, including, but not limited to, various New England license renewal applications due to be filed with the Commission by December 1, 1974. 1/

7. Finally, Starr submits that no prejudice or any detriment will result to the Guild from a grant of the instant extension request. Contrary to the allegations contained in the Guild's Application for Review, Starr has voluntarily cooperated with the Guild and has allowed Guild representatives to air over WNCN their views relating to the alleged fairness doctrine controversy herein, prior to WNCN's format and call letter change to WQIV(FM) on November 7, 1974. The listening public in WNCN's service area has therefore been exposed to the Guild's views on the alleged fairness doctrine problem. In sum, whatever urgency or need for expeditious Commission action to resolve the Guild's fairness complaint which may have allegedly existed at the time the Guild's Application for Review was filed herein on November 4, 1974, has since evaporated.

1/ It should be emphasized that other members of this firm are presently preoccupied with the preparation of supplementary documents which Starr intends to file shortly with the Commission relating to the merits of the Guild's September 23, 1974 "Petition". So that the record is clear on this question, counsel for Starr hereby assures the Commission that it is working expeditiously to provide the Commission with pertinent facts bearing upon the Guild's petition.

WHEREFORE, in light of all the foregoing, Starr respectfully requests that the Commission grant it an extension of time to December 16, 1974 to file its Opposition to the Guild's Application for Review herein.

Respectfully submitted

By _____
Peter Shuebruk
45 Rockefeller Plaza
New York, New York 10020

By _____
Benito Gaguine

By _____
Howard J. Braun

1211 Connecticut Avenue, N. W.
Washington, D. C. 20036

Fly, Shuebruk, Blume and Gaguine

Its Attorneys

November 15, 1974

A 168

CERTIFICATE OF SERVICE

I, Howard J. Braun, a member of the law firm of Fly, Shuebruk, Blume and Gaguine, do hereby certify this 15th day of November, 1974, that I caused to be personally served the foregoing "Motion For Extension Of Time To Oppose Application For Review" to the following:

Charles M. Firestone, Esq.
Frank W. Lloyd, Esq.
Citizens Communications Center
1914 Sunderland Place, N. W.
Washington, D. C. 20036
Counsel for the Guild

I also certify that I have this 15th day of November, 1974, mailed a copy of the foregoing "Motion For Extension Of Time To Oppose Application For Review", postage prepaid to the following:

Ms. Kristin Booth Glen
30 East 42nd Street
New York, New York 10017
Counsel for the Guild

David M. Rice, Esq.
Room 3014
200 Park Avenue
New York, New York 10017
Counsel for Classical Radio for Connecticut

Samuel Frankel, Esq.
Room 720
60 East 42nd Street
New York, New York 10017
Counsel for Classical Radio for Connecticut

Howard J. Braun

FOR RESPONSIVE MEDIA:
CITIZENS COMMUNICATIONS CENTER
1914 SUNDERLAND PL., N.W., WASHINGTON, D.C., 20036 (202) 296 42

WNCN
A 159

November 18, 1974

RECEIVED
NOV 18 1974
F. C. C.
OFFICE OF THE SECRETARY

Vincent J. Mullins, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D. C. 20554

Re: Petition for Revocation of
Starr WNCN, Inc. for Station
WNCN-FM, New York, New York

Dear Mr. Mullins,

On November 15, 1974, Starr WNCN, Inc. filed with the Commission a "Motion for Extension of Time to Oppose Application for Review", asking until December 16, 1974 to oppose the WNCN Listeners' Guild's application for review of the staff's Fairness Doctrine decision issued October 3.

The WNCN Listeners Guild will oppose this Motion. Because the opposition will be prepared in New York City and delivered to Washington, however, we expect that it will not be submitted before the end of this week. We therefore request that no positive action be taken with respect to the Motion prior to next Monday, November 25, 1974.

Thank you for your consideration on this matter.

Sincerely yours,

Charles M. Firestone
Counsel for WNCN Listeners Guild

cc: Howard Braun
Kristin Booth Glen
David M. Rice
Samuel Frankel

A 170

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

RECEIVED
Nov 22 1974
F.C.C.
OFFICE OF THE SECRETARY

In Re	)
	)
Petition for Revocation of License of	)
STARR BROADCASTING GROUP, INC.,	)
to operate	)
Station WNCN-FM, New York, New York	)
or	)
Immediate Submission of Renewal Applications	)
and	)
Public Hearing Thereon, Resolution of	)
Fairness Doctrine Complaint and Other Relief	)

OPPOSITION TO STARR'S MOTION FOR
EXTENSION OF TIME (FAIRNESS COMPLAINT)
AND MOTION FOR EXPEDITED CONSIDERATION

On November 15, 1974 Starr Broadcasting Group 1/ (hereinafter "Starr") moved the Commission for a four week extension of time in which to oppose the WNCN Listeners' Guild's (hereinafter "the Guild") appeal of the October 3 decision of the Broadcast Bureau denying the Guild's application under the Fairness Doctrine.

Starr's Motion demonstrate callous disregard for the interests of an enormous and concerned listening public for a prompt resolution of its grievances. 2/ In addition, it suggests a complete disregard for orderly

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1/ The motion was received by the WNCN Listeners' Guild New York Counsel on the afternoon of November 18.

2/ On November 9 the New York Times, in its fourth and strongest editorial on the WNCN format change, urged the Commission to hold immediate public hearings to resolve the many questions which surround this issue of great public importance. See Exhibit A(1) attached hereto.

Commission procedures.[3] Finally it is, at best misleading, with regard to the present realities of the Guild's fairness complaint.

For these reasons, the Guild not only strenuously opposes any motion for delay of any kind, it now moves for expedited consideration of all matters[4] presently before the Commission. The reasons for this will be set forth briefly and seriatim.

A. The Necessity for Prompt Decision

There is no question that the WNCN format change has already produced the greatest citizen protest in the history of broadcasting. More than 50,000 persons have petitioned the Commission to reinstate WNCN's unique classical format or to hold full public hearings on all the issues raised by the Guild.

The New Jersey Legislature has adopted a unanimous resolution decrying the format change and calling on the Commission to act expeditiously in holding full public hearings[5]

3/ In discussing its present and greatly belated plans to "oppose" the Guild's September 23 Petition, far out of the time provided for such opposition, and after the Guild has filed its response thereto. See Point "B" infra.

4/ Including the original Petition to Revoke Starr's license and/or to Order Immediate License Renewal Proceedings and the companion Petition of Classical Radio for Connecticut requesting a reopening of Starr's 1973 transfer application.

5/ See Resolution of New Jersey Legislature dated October 21, 1974 submitted to the Commission on November 5 as an Exhibit to Renewed Motion for Stay of Format Change.

On November 14 the City Council of the City of New York unanimously passed a similar resolution.[6] The prestigious New York Times has editorialized in a similar but unprecedented fashion, including a call for immediate Commission action on four separate occasions.[7]

It is the Guild's understanding that the Governors-elect of New York and Connecticut have expressed their dismay over the loss of the format,[8] and the Governor of New Jersey has already called for Commission action.[9]

But perhaps most important, the 400,000 former listeners of WNCN both famous and obscure[10] have found themselves devoid of any real substitute for the now defunct format and, each day of its continued absence from the air,

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6/ A copy of the resolution, as introduced and passed, is attached hereto as Exhibit B. The formal resolution takes approximately two weeks to print and will be forwarded to the Commission as soon as it is available.

7/ See Exhibit A(1). A small sampling of press opinion from other areas is included as Exhibit A(2-4).

8/ It is also our understanding that a resolution or letter relating to WNCN is presently being circulated by Representative Bella Abzug to all New York City area Congresspeople, and would be forwarded to the Commission at a later date.

9/ Amicus Telegram of Governor Brendan Byrne, filed in Supplemental Exhibits of October 4.

10/ See, e.g., the affidavit of composer Ned Rorem, attached as Exhibit C hereto, and letters attached as Exhibits to affidavit of Jess Brodnax, Exhibit D, including ministers (Dietterich, Gross), Jesuits (Bradt), Roman Catholic sisters (Rose Marlen), Rabbi (Urgar), the New Symphony Orchestra (Bambech), high school students (Kreiss), the William (cont'd.)

suffer serious and irreparable injury.[11]

Against the enormous weight of these equities, Starr offers only "prior professional commitments . . . now being fulfilled by counsel" and "the unusually heavy work load in counsel's office" (Starr Motion, p. 2) While normally a request for extension under these circumstances[12] should be given consideration, under the actual circumstances, described in part above, any delay, for any reason[13] would itself be a violation of that "public interest" standard which mandates the Commission in all its determinations.

10/(cont'd)

Clyde DeVane Professor of Humanities at Yale University (Bloom) the old and disabled (Trainer), mental patients (Elms), teachers (Jay) and persons from all walks of life who have relied on WNCN for their cultural and spiritual sustenance.

11/ See Affidavit of Ned Rorem, supra and Jess Brodnax, Exhibit D, and letters attached thereto.

12/ We would note, however, that whatever strains have been placed on Starr's counsel, have been easily as great on counsel for the Guild - who willingly meet them in the hopes that the public interest may more quickly be determined and served.

13/ Including those of far greater magnitude than what, in the end, boils down to no more than counsel's convenience.

B. Proposed Disregard of Commission Procedures

Perhaps the most startling statement in Starr's Motion is this, contained without other explanation, in a footnote:

> It should be emphasized that other members of this firm are presently preoccupied with the preparation of supplementary documents which Starr intends to file shortly with the Commission relating to the merits of the Guild's September 23, 1974 "Petition". So that the record is clear on this question, counsel for Starr hereby assures the Commission that it is working expeditiously to provide the Commission with pertinent facts bearing upon the Guild's petition.
>
> Starr Motion, p. 4, footnote 1.

The Guild filed its Petition on September 23, less than a month after the listening public first received notice that the classical format was to be removed from the air. On October 4 Starr filed an extensive Opposition to the Petition, and on October 21, [14] the Guild filed its Reply to Starr's Opposition. [15] Since that date, as we have argued elsewhere, the case has been ripe for Commission determination. As we

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14/ Both the Opposition and Reply were filed slightly out of time limits on consent of opposing counsel.

15/ See, e.g., Guild's Renewed Request for Stay, filed with the Commission November 5, 1974, Petition for Rehearing, Suggestion for En Banc Consideration and Request for Expedited Action filed with the United States Court of Appeals for the District of Columbia Circuit on October 29, 1974.

have also argued[16] the papers presently before the Commission clearly raise those issues of fact recognized by the courts[17] as requiring determination in full evidentiary hearings.

Starr now rather offhandedly suggests that it has no intention of following ordinary Commission procedure, but that it is now, more than a month and a half later, preparing another Opposition, after the Guild has already filed its Reply. This extraordinary proposal disregards both the Commission's settled procedures and the procedural and substantive rights of the Guild and its members. Cf. Stone v. FCC, 466 F.2d 316, 333 (D.C. Cir. 1972) (licensee cannot freely amend after waiting to see if errors are caught).

The Guild is content to rest on the documents timely submitted to date; we would, in fact, request an immediate determination, based on the material presently before the Commission, either of the ultimate merits of our Petition, or as to whether hearings must be held.

Any other timetable, particularly one conceived and executed ex parte by the Respondents, is totally at odds with the public interest as it is clearly presented in this case.

16/ E.g., Guild Reply to Starr Opposition.

17/ E.g., Citizens Committee to Save WEFM v. FCC, ____ F.2d ____ (D.C. Cir., Docket 73-1057, October 4, 1974) (en banc).

The Guild and the New York City public would be severely prejudiced by any Commission deference to Starr's intentions to submit untimely and extraneous material in the future.

C. The Status of The Fairness Complaint

Finally, Starr's Motion reaches a new high in disengenuity[18] when it discusses the fairness issue itself. Starr states

> "Starr submits that no prejudice or any detriment will result to the Guild from a grant of the instant extension request. Contrary to the allegations contained in the Guild's Application for Review, Starr has voluntarily cooperated with the Guild and has allowed Guild representatives to air over WNCN their views relating to the alleged fairness doctrine controversy herein, prior to WNCN's format and call letter change to WQIV(FM) on November 7, 1974."

18/ Starr previously submitted only a partial selection of the messages it had broadcast, arguing to the Commission that on the basis of that purportedly complete set, no issue of controversial public importance was raised. The staff agreed, without considering numerous other tapes and announcements monitored by the Guild; this apparent misrepresentation and resulting decision form one of the bases for the Guild's appeal to the full Commission.

This is simply untrue. Over the entire 2 1/2 month period when the format's departure was the source of enormous public concern, Starr aired hundreds of its own editorialized messages and those of its "Citizens Advisory Committee".[19] All messages indicated that the only way to save the format was to move it with half a million dollars of listener pledges.

When the Guild's attempts to have a contrasting viewpoint aired[20] were unsuccessful, the Guild offered to purchase time to make its position known. This offer was accepted by Starr's management and the Guild prepared an informative, non-defamatory, educational program for broadcast

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19/ As we have discussed elsewhere, this Committee is totally the creature of Starr, each member having been appointed by William F. Buckley, Jr., Chairman of the Board of Starr. Its Chairman, Richard Clurman, has often stated that his committee is limited by the "mandate" given it by none other than Mr. Buckley--to dispose of WNCN's musical assets after its demise.

20/ I.e., that legal action could be taken and that citizens had a First Amendment right to petition their Government--through the Commission--for appropriate regulation of the public airwaves in their interest.

on October 30. On that date the Guild's president was informed that the tape would not be aired, although no one had listened to or disapproved it. A subsequent attempt to deliver the tape and a check for the reserved time on the following day was similarly unsuccessful.[21/]

On November 6, the day before the format change, Starr began airing, on an hourly basis, a rather confusing statement by Richard Clurman about attempts to place the format on another channel. This message also requested viewers to write to the "Committee""--at Starr's address! No mention was made of the Guild or the FCC.

Counsel for the Guild called the station and protested strenuously that once again Starr was presenting an entirely one sided view of the issue.[22/] After several calls and the submission of a written statement, the station's

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21/ All of this information is contained in far greater detail in the affidavit of Robert Schack, President of the Guild submitted Nov. 5, 1974 (as part of our appeal of the fairness decision). It should be noted, however, that the program was subsequently broadcast on another station--WBAI--which considered the material contained within a sufficiently "controversial public issue" to offer Starr time to respond to it. See letter of Larry Josephson to Starr Broadcasting, attached as Exhibit E.

22/ All the following information is contained in the affidavit of Kristin Booth Glen, attached as Exhibit F.

vice president permitted counsel to make a short tape, reading the Guild's statement.

This tape was broadcast a few times on the evening of November 7[23] and then, despite promises that it would be aired on an hourly basis until WNCN went off the air at 11 the next morning, it was abruptly cancelled by a telephone order by William F. Buckley.

When counsel discovered this fact the following morning, she again protested vigorously and the tape was aired one additional time--at 9:30 A.M., an hour when most listeners had already left for work.[24] This action by the station hardly qualifies either as good faith or as voluntary cooperation[25] --regardless of how Starr may characterize it. And under no circumstances may it now be seriously claimed that ". . .the listening

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23/ The Clurman tape continued to be broadcast hourly until the end.

24/ Whether accidentally or by design, the block of time during which the Guild tape was cancelled affects probably the two largest blocks of WNCN listeners--those who tune in after midnight and those who listen in the early morning before work or school.

25/ The cynic might well consider that it was a last minute attempt to clear up Starr's position in the fairness litigation rather than a bona fide presentation of opposing view.

public. . .has been exposed to the Guild's views. . ." when Starr's own practices as to its own and the Clurman tapes demonstrate conclusively that far greater exposure is required to reach "the listening public" than was given "voluntarily" or otherwise, to the Guild.

The cynicism of Starr's position is apparent in its concluding statement that

> In sum, whatever urgency or need for expeditious Commission action to resolve the Guild's fairness complaint which may have allegedly existed at the time the Guild's Application for Review was filed herein on November 4, 1974, has since evaporated.

In one sense, of course, this is true. There is, at this moment, no remedy[26] which would make either the Guild or the listening public whole after Starr's long-term misleading and self-interested editorializing. But this misses the larger issue. The true remedy for the fairness

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26/ Even an immediate grant of comparable air time would be meaningless as the old, classical listening audience is clearly no longer tuned to the new rock station. Interim remedies, including fines which would permit information to be transmitted through other media could, however, effectively be fashioned by the Commission in its broad discretion--both to ameliorate the present situation and to discourage broadcasters in the future from similar "irremediable" but illegal actions.

issue, as for all Starr's alleged illegal acts, is a return of the call letters and the format to 104.3 on the dial.

Since the Commission was unwilling to grant the extraordinary relief of a stay to prevent the present "irremediable" situation, we would now call upon it to expeditiously render its full decision on all issues. Prompt decision is the only real remedy now available.

WHEREFORE, the Guild strongly opposes any application for extension of time by Starr, and respectfully moves that the Commission consider all matters now before it in an expedited fashion so that the various issues of the public interest, convenience and necessity may be promptly resolved.

Respectfully submitted,

Kristin Booth Glen
Kristin Booth Glen
30 E. 42d Street
New York, New York 10017

Frank W. Lloyd
Frank W. Lloyd

Charles M. Firestone
Charles M. Firestone

Citizens Communications Center
1914 Sunderland Place, N.W.
Washington, D.C. 20036
Counsel for WNCN Listeners' Guild

November 22, 1974

A 182

List of Exhibits

A(1) N.Y. Times ed.
A(2) Newsday article
A(3) Trentonian article
A(4) Newsday article

B City Council Resolution

C Rorem aff.

D Brodnax aff.

E Josephson letter

F Glen aff.

CERTIFICATE OF SERVICE

I, Consuella Garnett, certify that I have this 22nd day of November, 1974, caused to be delivered via First Class Mail, a copy of the foregoing "Opposition to Starr's Motion for Extension of Time (Fairness Complaint) and Motion for Expedited Consideration", to the following:

Joseph A. Marino
Associate General Counsel
Federal Communications Commission
1919 M Street, N.W.
Washington, D. C. 20554

Howard Braun, Esq.
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Samuel Frankel, Esq.
Room 720
60 East 42nd Street
New York, New York 10017
Counsel for Classical Radio For Connecticut

Consuella Garnett
Consuella Garnett

EXHIBIT A(1)

THE NEW YORK TIMES, SATURDAY, NOVEMBER 9, 1974

The New York Times

Founded in 1851
ADOLPH S. OCHS, *Publisher 1896-1935*
ARTHUR HAYS SULZBERGER, *Publisher 1936-1961*
ORVIL E. DRYFOOS, *Publisher 1961-1963*

ARTHUR OCHS SULZBERGER
Publisher

JAMES RESTON, *Vice President*
JOHN B. OAKES, *Editorial Page Editor*
A. H. RASKIN, *Assistant Editorial Page Editor*
A. M. ROSENTHAL, *Managing Editor*
SEYMOUR TOPPING, *Assistant Managing Editor*
MAX FRANKEL, *Sunday Editor*
JACK ROSENTHAL, *Assistant Sunday Editor*

CHARLOTTE CURTIS, *Associate Editor*
CLIFTON DANIEL, *Associate Editor*
TOM WICKER, *Associate Editor*

WNCN, WQIV, F.C.C.

Loyal listeners who tuned into classical music station WNCN-FM hoping to hear Beethoven's "Eroica" symphony instead heard a progressive-rock number called "Roll Over Beethoven" this week. Beethoven must indeed be whirling—certainly serious music fans are steaming—now that WQIV-FM is operating on the WNCN-FM frequency. Despite legal action taken to protest the change in format that gives metropolitan New York listeners still another rock radio station, the Federal Communications Commission is dragging its affidavits.

What is called for is a hearing by the F.C.C. A major turnaround in the promised format of a Federal broadcasting franchise on the limited airwaves surely should be the subject of open evidence, testimony and a decision. A number of issues need airing—the circumstances of the programing switch, the needs of the community measured by what is available already, the disposition of the music library, the possibility of a freeze in the classical format until a determination is made.

The time is past for listener pledges and station promises. It isn't programing, censorship or dictation when a Federal regulatory agency does what it is charged to do by Congress—regulate.

LI NEWSDAY Nov. 8, 1974 Page 6A
RADIO

An abrupt station break

By Martin Levine

Progressive rock premiered yesterday at 104.3 on the FM dial after a battle to keep it from supplanting classical music there.

Listeners to WNCN have been trying in the courts and before the Federal Communications Commission to bar the Starr Broadcasting Group from changing its station's call letters and format. They've had some setbacks, however, while a committee trying to relocate the classical record library has apparently been making progress. At 11 AM yesterday, therefore, the long-delayed transformation took place. Those opposed to it may have justly felt that insult was added to injury.

It was tactless enough for WQIV to begin with the Electric Light Ochestra's version of "Roll Over, Beethoven," which uses the Fifth Symphony as a prelude to Chuck Berry. Worse, however, was the cutting short of WNCN's swansong. The kindest explanation is that a nervous ear mistook a rest for the ending of Mozart's Requiem, with which the station concluded 18 years of classical programing.

The WNCN Listeners Guild will no doubt continue fighting as long as its funds permit. A large, young audience, however, is probably more interested in the new format. Can anything be said after a half-day's listening?

Well, not about its quadraphonic sound—at least, not by me and almost everybody else. WQIV claims to be the first New York radio station regularly broadcasting four-channel rock (thus the call letters: quad, roman numeral four). But who has a QS matrix system? When the first quadraphonic selection was played, we were all urged to rush down to our local hi-fi store to hear it.

It's also too early to say much about news and public-affairs programing. WQIV's "FM newsroom" features the only movie critic on New York progressive radio, but he spent the day interviewing director Brian De Palma in two-minute segments. A light feature called "Roll-Away-the-Stone News" sounded like it was using its pilot before really getting going. And other departments, like one on astrology and a free "classified of the air," haven't yet been aired.

Still, they did play and identify music yesterday. The three disc jockeys I heard—Larry Miller, who is also program director and regularly has the 9 AM-to-1 PM shift; Thom O'Hair, a prizewinner from San Francisco's KSAN who is on from 1 to 5, and Bill (Rosko) Mercer, whom New Yorkers will remember from WOR-FM and who can be heard between 5 and 9—seemed a trifle formal and self-effacing. But they chose their music well, with an emphasis on older material, lesser-known songs by major artists, and, in Rosko's case, jazz and blues.

If first impressions are right, and if the jocks loosen up a bit, WQIV could prove what it modestly announced itself as: "An alternative in New York." (For Long Islanders who can get WLIR as well as WNEW-FM, it is, of course, a third choice.) It seems a poor bargain to get such variety at the cost of New York's only full-time classical-music station, however. /II

Linda Holt on Arts

Help Save WNCN-Radio

One of the definitions of a democracy is the rule of the majority with protection for and consideration of the minority. In the case of classical music listening, I suspect the number of Americans who chose to enjoy this variety of music on radio and television represents a significantly large minority. Surely, in a cultural center such as New York City, this minority — if indeed it is a minority in the metropolitan area — takes on an intensity of presence which makes it a real force in the field of radio and television patronage.

Now we come to the root of the problem, a problem which affects not only New Yorkers, but lovers of democracy and good music everywhere. Radio Station WNCN is the only full-time classical music station in the New York metropolitan area. There are, in contrast, some 40 pop music stations, as well as a sprinkling of stations with classical-public service formats. Several months ago Starr Broadcasting, which owns WNCN, announced it would switch from classical to "progressive" rock, as though the qualifying "progressive" in some way made the change seem more cebebral.

LINDA HOLT

his change takes place, it means the minority — a good-sized, strong minority — is being deprived of its protection and consideration in the field of radio broadcasting. It means an end to the diversity, the freedom of choice Americans cherish in all aspects of their lives, and perhaps more important, it implies a policy of creeping philistinism, not emanting from the people, but rather imposed from without by the individuals who control the airwaves.

There is a spark of hope, however, a slim ray of light which might very well dispel this overwhelming prognosis of gloom. It is called public response and anyone who might accuse classical music lovers of apathy or despair can look to the WNCN Listeners' Guild for a bracing splash of encouragement.

The Listeners' Guild was formed several weeks ago by Bob Shack, a New Yorker concerned about music and a basic American freedom, the freedom of choice. In a remarkably short period of time, the Guild mustered the support to obtain a court restraining order to prevent the implementation of rock programming on Oct. 5 as originally scheduled. The guild has petitioned the FCC to arrange public hearings to determine whether the station's unstable financial status was indeed due to its clasical format, or whether it was due to faulty management.

While WNCN does not reach all FM sets in the Trenton area, many listeners with sensitive equipment and a directional antenna have tuned regularly to 104.3 FM for the finest conceivable classical music programming cushioned in tastefully low-key commercials. One of these listeners is Jim Brady of Allentown, who is something of an ear chairman in the Guild drive to obtain petition signatures and much-needed funds to finance its court campaign against Starr Broadcasting.

"It's as much a matter of diversity as anything else," Brady told me this weekend. Brady, who is a sales manager with a tire company by day and an amateur violinist and passionate music-lover at every other available moment, became involved with the Cause after writing a letter to WFLN in Philadelphia this summer, imploring the station not to change its fine arts format.

"Somehow, the letter filtered up to New York and here I am," he said. "I'm not exactly the sort to be out knocking on doors asking for signatures, but you have to do something before it's all gone. There have been enough compromises."

Like many thousands of WNCN listeners, Brady considers the station's broadcasts his "daily spiritual manna," not only for himself but for his three sons as well. Like many, he feels betrayed by such self-declared music lovers as William F. Buckley Jr., who is the chairman of Starr Broadcasting, for high-sounding rhetoric on the one hand, dirty-dealing on the other, more practical side.

Brady invites all those interested in helping this station — which is sympotomatic of the oppression classical music endures in many dimensions of our society — to write or call him at home (17 Probasco Dr., Allentown, N.J., 08501) or to write the WNCN Listeners' Guild, 663 Fifth Ave., N.Y., 10022. Let there be a choice.

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Turning From the

By Al Cohn

If you like junk, you're better off, because this is the junk age.

—WNCN disc jockey Harry Fleetwood on one of his last shows

A classical music lover's nightmare came true in broad daylight yesterday. Beloved WNCN, one of radio's last outposts of fine music in metropolitan New York, instantly turned into another "progressive rock" music station, WQIV-FM. Fittingly, the station went down with Mozart's unfinished "Requiem Offertorium." Perhaps equally fittingly, the new station premiered moments later in the most ironic and tasteless fashion, with a gush of regressive rock called "Roll Over, Beethoven."

WNCN died a noble death, remaining on the air a month longer than planned while the courts considered the pleas of various listener groups attempting to stay the execution. And, presumably, while WNCN's owners (now WQIV's owners) kept up its promised search for another station that would assume the classical music station's old library and format.

When the end came yesterday at 11 AM, WQIV had the indecency to rub it into saddened listeners who had hoped against hope that WNCN would survive. The "Roll Over, Beethoven" ploy, probably intended as a little joke, came off as a cruel twist of the knife. An oily voice welcomed us to "our alternative in New York" (alternative to what?) and noted that the format change reflects the "contemporary realities of life in New York." Well, perhaps that is all too true.

Nevertheless, the owners had come under heavy criticism for the planned switch to WQIV. In defense of the decision, t
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L. NEWSDAY PATCHOGUE NOV. 1974

Bachs to the Bucks

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Robert Sherman. The municipal station, WNYC-FM, still offers its excellent "While the City Sleeps" during the wee hours. But its regular daytime classical programs on both AM and FM are often swallowed by United Nations filibustering and a young woman who endlessly drones the bad news from Wall Street.

Several small Connecticut and Long Island stations that at least used to fade in and out with classical music have faded out altogether. One Long Island station, WHLI, switched to contemporary music nine years ago after 18 years of classical broadcasting.

"We have a large classical library sitting around the basement," the station's music director, Stephen Godofsky, said recently. "There are simply not that many people who appreciate the classics."

With a surprising minimum of publicity, there is one other commercial station, also on Long Island, which disagrees with Godofsky's contention. For 23 years, WALK-FM in Patchogue (97.5) has offered classical music for a few hours daily. It now has plans for expansion. Station manager Jack Ellsworth, who has been at WALK for all of those 23 years, said that on Dec. 7 it will begin broadcasting the Metropolitan Opera live every Saturday, on AM and FM. The station's signal is not that strong (except, perhaps, in Patchogue), but it reaches most of the metropolitan area with a touch of occasional interference.

"We're making money," Ellsworth said. "People call us to thank us for being an oasis in a desert of noise." More power to you, WALK. The desert grows larger.

Al Cohn is a staff writer for LI magazine.

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A 188 RES. NO. 381 EXHIBIT B

NOV 14 1974

Resolution Calling Upon the Federal Communications Commission to Promptly Hold Public Hearings on the Termination By WNCN-FM of its Classical Music Format and to Continue WNCN-FM as a Unique Cultural Resource of New York City.

By Mr. Burden and Mr. Wagner, Jr.

WHEREAS, for many years radio station WNCN-FM has provided a unique service to the citizens of New York in its 24 hour broadcasting of quality classical music; and

WHEREAS, the continued existence of WNCN-FM and its unique classical music format is an integral and essential factor in maintaining New York City's cultural diversity and its status as the leading musical city in the world; and

WHEREAS, the new management of WNCN-FM has recently ceased to broadcast the rich and varied classical programs previously offered by the station, and has instead substituted "pop" and "rock" music similar to that aired on eleven others in the New York Metropolitan area; and

WHEREAS, the loss of this unique cultural resource has been decried by New York City's press and the public, as demonstrated by the tremendous outpouring of letters, telegrams, petitions and telephone calls from WNCN's listeners opposing any format change; and

WHEREAS, The Federal Communications Commission has the authority and the responsibility to hold public hearings to determine whether the management of WNCN-FM in eliminating its classical music programming is undertaking actions inconsistent both with its original license application and with the public interest generally; and

WHEREAS, The Legislature of the State of New Jersey has already affirmed the importance of maintaining this unique classical music format by passing a resolution urging the Federal Communications Commission to hold public hearings to determine whether the WNCN management should be permitted to change its classical format; now, therefore, be it

RESOLVED, that the Council of the City of New York does hereby call upon the Federal Communications Commission to promptly hold public hearings on the termination by WNCN-FM of its classical music programming or any other change of format from classical to popular music and to continue WNCN-FM as a unique cultural resource of this city.

EXHIBIT C

A F F I D A V I T

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

NED ROREM, being duly sworn, deposes and says:

I am a contemporary American composer, having written music for almost all of my life. I was educated at the Juillard School of Music, from which I graduated in 1948. Since that time I have won numerous awards including the George Gershwin Award, and I have also held a Fulbright Fellowship. I have composed music in many forms including an opera, "A CHILDHOOD MIRACLE", string quartets, piano sonatas, and a symphony. The works for which I am perhaps best known are numerous art songs which, like the other compositions, have been performed all over the world. I am also an author and commentator on musical subjects, having published six books and innumerable articles.

Prior to November 7, 1974 I was a regular listener of Station WNCN-Fm, New York. As I have publicly stated, I considered WNCN perhaps the most important music station in America. Its presentation of contemporary music was excellent and unparalleled. From a composer's standpoint, this service alone made it an incomparable resource of the musical community. Indeed, I believe that WNCN and its unique classical music format performed an important service for the whole of American culture. Its loss is nothing less than a tragedy.

Since the station has been off the air it is clear that there is no comparable substitute either for me or for my

fellow musicians and composers in the New York musical community. Each day that the station remains off the air, we all suffer an irreparable loss.

Ned Rorem

Ned Rorem

Sworn to before me this
20th day of November, 1974.

Kristin Booth Glen

KRISTIN BOOTH GLEN
Notary Public, State of New York
No. 31-[illegible]
Qualified in New York County
Certificate filed in New York County
Commission Expires March 30, 1976

EXHIBIT D

A 192

A F F I D A V I T

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

JESS BRODNAX, being duly sworn, deposes and says:

I am an officer of the WNCN LISTENERS GUILD and I am in charge of the day-to-day operations of its volunteer headquarters.

Since November 7, 1974, the day on which the classical format ceased, the public response which I have observed in this capacity has been quite extraordinary.

In the first two full mail days following the station going off the air, the Listeners Guild received almost 1,000 letters of protest and dismay. The mail has continued at a rate almost that high to and including today. Persons who believed that the loss of the format would be a serious one now find themselves totally at a loss for equivalent musical and cultural satisfaction. The Guild's phones are constantly busy with hundreds, if not thousands, of persons decrying the loss of this great cultural institution and virtually begging for information on what can be done to assure its return. Almost all of the letters or callers express the sad truth that there is simply nothing like WNCN available and that every day it is off the air they suffer irreparable injury.

A sampling of letters received by the Guild in the first two days after November 7th is attached as exhibits hereto. From

my personal knowledge the thousands of other communications and inquiries the Guild has received are similar in nature. The sense of outrage and loss in New York's classical music listening community simply cannot be measured.

Sworn to before me this
18th day of November, 1974.

Jess Brodnax
Jess Brodnax

KRISTIN [illegible]
Notary Public, [illegible]
Qualified [illegible]
Certificate [illegible]
Commission Expires [illegible]

Kristin Booth Glen

KRISTIN BOOTH GLEN
Notary Public, State of New York
No. 31-9320450
Qualified in New York County
Certificate filed in New York County
Commission Expires March 30, 1976

D-3

First United Methodist Church

A 194

One East Broad Street
Westfield, New Jersey 07090

MINISTERS
CLARK W. HUNT
PHILIP R. DIETTERICH
GEORGE C. SCHLESINGER
JAMES A. JOHNSON

10:25 AM
NOVEMBER 7, 1974

THE LISTENER'S GUILD
663 FIFTH AVE.
NEW YORK CITY, N.Y. 10022

DEAR SIRS:

THIS IS A VERY SAD DAY, THOUGH THE SUN IS SHINING BRIGHTLY AND THE WEATHER IS UNUSUALLY BEAUTIFUL FOR NOVEMBER. THE MOZART REQUIEM IN AN INSPIRING PERFORMANCE UNDER COLIN DAVIS IS SOUNDING OVER WNCN's FREQUENCY, BUT THIS MAY BE THE LAST TIME.

NO MORE QUALITY MUSIC TO FEED THE SOULS AND SPIRITS OF MANY WHOM I SERVE AND WHO ARE DEEPLY DISAPPOINTED IN THE COUNTRY, IN THE COURTS, AND IN THE INTEGRITY OF THOSE WHO SELL OUT FOR MORE MONEY, ESPECIALLY THOSE RESPONSIBLE FOR WNCN. IN A PLURALISTIC CULTURE WHERE IS PLURALISM IN RADIO COMMUNICATION? IN 1962

I LOVED THE VARIED LISTENING EXPERIENCES POSSIBLE ON FM STATIONS IN THIS AREA. BUT NOW, I WONDER WHY PEOPLE GO TO THE EXPENSE OF INVESTING IN FM BANDS.

A 195.

LAST NIGHT A WOMAN WHO HAS LISTENED AND BEEN A LOYAL DEVOTEE OF WNCN FOR SEVERAL YEARS ALMOST CRIED AS SHE SPOKE TO ME OF THE FUTURE WITHOUT WNCN'S FINE MUSIC. SHE HAS PLEDGED, WRITTEN LETTERS, AND PHONED TO HELP SAVE IT. SHE SAID, WHY MUST THOSE WHO LOVE AND NEED SERIOUS MUSIC HAVE TO COMPLETELY SUPPORT IT AND NOW FIGHT FOR IT. "IT'S NOT FAIR!" THIS MEMBER OF MY CONGREGATION EXPRESSED IT WELL. A STEADY DIET OF "COMMERCIAL MUSIC" ONLY? YES, WE'LL BE THE NATION OF SHEEP WHO ALLOW OTHERS TO DICTATE TASTE! TALK ABOUT BOOK BURNING, IF WE'RE ONLY ALLOWED A LIMITED DIET OF SOUNDS ON THE AIRWAVES RATHER THAN THE FANTASTIC SMORGASBORD THIS METROPOLIS COULD PRODUCE THEN OUR LIVES WILL BE THE POORER AND OUR PEOPLE ILL-SERVED.

WHATEVER CAN WE DO IN OUR FRUSTRATION? I HAVE PLEDGED MONEY. I WILL WRITE LETTERS, I WILL GIVE TIME. IS THERE NO HOPE?

Philip R. Deeter, M

A 196

26 Hawthorne Avenue
Trenton, N.J. 08638
November 7, 1974

WNCN Listeners Guild
663 Fifth Avenue
New York, New York

Dear Sirs:

Eleven o'clock this morning was a sad moment for me as I listened to the end of WNCN. The last work played was by my favorite composer, Mozart, and, even though I had prior knowledge of its termination yet I remained wistful that somehow the changeover would not in actuality take place.

For over two years I have been a faithful listener to WNCN. I discovered the station by accident and could not believe the wealth and diversity of its classical music, which I find rich satisfaction in listening.

I am now 48, and a minister, but from the age of 8 I first began music lessons on the piano, and, especially after taking a course in Music Appreciation at the Philadelphia College of Bible classicla music came alive to me. I do not have the funds to purchase a classical music library and this causes me more sadness not to hear such fine music wich has proven a rich cultural advantage to me personally and has been a help to me in my ministry.

It is heartening to learn of your determined efforts to bring classical music back to New York and I do hope that you will be successful even though I may never again have the opportunity to listen to the format of WNCN. It is highly unlikely that I will be able to pick up the signal as the radio band is choke full of stations.

Thanks for informing me where I can put my name to add to the list of those who support WNCN.

Sincerely,

Charles B. Gross
Pastor
Brae Burn Heights Community Chapel
31 Hawthorne Avenue
Trenton, N.J. 08638

Murray-Weigel Hall

FORDHAM UNIVERSITY

Bronx, N.Y. 10458

D-6

A 197

11/7/74

WNCN LISTENERS' GUILD
663 FIFTH AVENUE
NEW YORK, N.Y.

Friends:

Congratulations on all your efforts and hard work! I had thought the cause for WNCN had been abandoned until I heard your announcement on WNCN this morning. I am one of about 200 Jesuits connected to Fordham University dedicated to scholarship and teaching things of the heart and mind. Ever since the first days of education in Aristotle's own school, an integral part of learning has always been an appreciation of art and music, and we as Jesuits have striven to support and advance the arts throughout our 400 year old history. There are many Jesuits here, ranging in age from 20 to 93, who are concerned about the fate of WNCN but, up to now, have been thoroughly confused how best to aid in the struggle to preserve not only the format but the station itself. STARR's ploy of using Buckley as a front for their plans diverted some into pledging support for the deceptively titled "SAVE WNCN" campaign. Since they have learned of your efforts, they have withdrawn their pledges. Please let us know how we can best aid your struggle to stop STARR and restore WNCN to its legitimate place on the radio dial. Any information you can provide to me, I'll disseminate among the various houses and communities of Jesuits here. My own duties and assignments keep me rather busy, but if there is any further aid or assistance I can render, please let me know.

In any case, thank you sincerely for all your work. There are countless people who appreciate what you've done. Who knows what we can accomplish working together!

Sincerely,

Rev. Kevin M. Bradt S.J.

Rev. Kevin M. Bradt, S.J.

P.S. Eight years ago I bought my FM radio precisely to listen to WNCN. I refuse to reduce myself to listening to elevator Muzak or the classical "pops," served up in bits and pieces between offensive advertisements. If you know anyone who wants a second-hand WNCNless radio, please let me know. Without WNCN, the radio is of no use to me.

A 198

MOUNT SAINT DOMINIC ACADEMY
CALDWELL, NEW JERSEY 07006

November 7, 1974

The Committee to Save WNCN-FM
663 Fifth Avenue
New York City, New York

Dear Committee Members,

As a faithful and interested listener of WNCN-FM for years and a lover of classical music since my earliest recollections of listening to the radio as a child, I sincerely deplore the loss of such a valuable station to its listeners.

I am listening to the very last hour at the present moment with a sense of losing a dear and valuable friend. I admire and support all your efforts to retain this station. I trust this letter will express my sentiments to you. Please add my name to the list of supporters of WNCN-FM. I hope all of your efforts on behalf of so many people will come to a successful return of hours of listening pleasure to all.

Sincerely,
Sister Rose Martin
Sister Rose Martin

D-8

A 199

Dr. André Ungar
Rabbi of Temple Emanuel
111 Washington Avenue
Westwood, N. J. 07675

NOrth 4-2880

September 27,1974.

WNCN Listeners' Guild
663 Fifth Avenue
New York, N.Y.10022.

Dear Friends,

I applaud and wholeheartedly support your actions on behalf of WNCN's survival as a significant radio station. Enclosed, a tiny symbolic gift, hoping that it qualifies me for membership.

Perhaps it will be of interest to you that I have discussed the threatened change of format at WNCN, and its ethical and spiritual implications, from the pulpit of my congregation. Scores and scores of people have since expressed to me their passionate agreement on this matter. I cannot know just how many members of this 1500-soul congregation share my own concern...but that they are very many, I can state with utter confidence.

With best wishes,

Cordially yours,

André Ungar

Faculty Member
The New School for Social Research

A 200

D-9

THE NEW SYMPHONY ORCHESTRA
370 Riverside Drive, 11 E
New York, New York 10025

The WNCN Listeners' Guild:

What an outrage to be subjected this Thursday morning to such travesty and musical banalities on the same wave-length that an hour earlier let us hear Mozart's Requiem!
The members of the New Symphony Orchestra depend on a station like WNCN even more than the general public.
We hope you continue your fight to bring WNCN back. Please keep us informed.

Sincerely,

Dirk-Holger Bambeck

Dirk-Holger Bambeck
Music Director

D-10

A 201

One Brian Terrace
Spring Valley, New York 10977
November 7, 1974

WNCN Listeners' Guild
663 5th Avenue
New York, New York 10022

Dear Friends:

Several Saturdays ago, I happened to read in The New York Times That WNCN was scheduled to go off the air that evening at midnight. I was not a listener of classical music; however I have several friends who are and have been trying to convince me to listen to some. In light of this, I thought it might be an interesting experience to tune in that evening at 11:00 and listened to what would be presented as your final hour of existence.

By 11:45, as the music gently lulled me to sleep, I came to the sudden realization that I was immensely enjoying what I was hearing. It seemed cruelly ironic that I had discovered something just as it was about to die... When an announcement was made at midnight stating that you had been granted a reprieve, I was elated. My radio has been constantly tuned to 104.3 ever since.

Today I had an extremely depressing experience. When I left for school this morning, my radio was playing the sweet music of Tchaikovsky, and when I returned this afternoon it was playing arrogantly loud rock music. While I do, on accaision, enjoy rock music, hearing it then was a statement of bitter defeat and disappointment. Therefore, although I am only a high school student, I would like to be counted among those who feel strongly that WNCN should be continued.

What has happened to WNCN is clearly an example of the fallacy in today's society--objectivity and the profit motive have been allowed to eclipse the quest for joy through liberation of the human spirit, of which classical music is a vital expression. My hopes, support, and best wishes go with you, and I look forward to hearing some good news from you soon. Until then, my dial remains regretfully tuned to WQXR.

Cordially,

Donald M. Kreis

DMK/dmk

Donald M. Kreis

A 202 D-11

Yale University New Haven, Connecticut 06520

DEPARTMENT OF ENGLISH
Linsly-Chittenden Hall
(203) 432-4454

7 November

To the WNCN Listeners' Guild:

I write to express my indignation at coming home this afternoon to find that the only classical musical station available to me has been given over to the squalor of "rock".

Please tell me if there is anything I can do to help bring back WNCN as it was.

Sincerely
Harold Bloom
William Clyde DeVane Professor of the Humanities

A 203

D-12

WNCN Listeners Guild.

We are two old' retired people who love classical music, we cannot afford to go to concerts or buy records, but WNCN always gave us much pleasure every day with beautiful music. The thought of rock and roll music now, makes us sick. Please do all you can to bring back our classical music station.

Mrs. Jennie Triano
45 American Blvd.
Brentwood
N.Y. 117-17

A 204

D-13

Dear Tattwood

I am a patient at Manhattan State Hospital. Progressing getting better

I turn you on at 11.00 & you give me great joy. Don't worry about those letters about Watson I loved him too but you are alright c me

Music is the only thing that makes me a human being. I identify with music. Sometimes it is so like my feelings that I can't stand it. There is that fine line again

Cordially
Irene Elms

How about a Mass of Mozart.

D-14

STATEN ISLAND COMMUNITY COLLEGE
THE CITY UNIVERSITY OF NEW YORK

A 205

Department of Performing and Creative Arts

October 5, 1974

Chairman,
WNCN Listeners' Guild
663 Fifth Avenue
New York, New York 10022

Sir:

In writing this letter I wish to express my full support of legal efforts now in progress to prohibit Star WNCN Incorporated from changing the format of it's radio station from classical music to rock music.

I speak from the well-informed stance of one who, for four years, has been an assistant professor of music at a College in the City University, teaching, among other courses, "Making Blues and Rock Music" for academic credit here. In addition, for the past two years I have been and continue to be active on the Board of Directors of the Staten Island Council on the Arts.

In my opinion, rock music is in a period of decline, with the greatest interest being shown in the revival of older styles. There are no new creative forces in evidence. I have continuously tried to bring forth in my students a desire to accept a wider range of musical experience than they are familiar with after years of listening to rock radio. I have directed their attention, in many surprising cases, to WNCN, the "all classical, all the time" station. Without WNCN in existence I will have very little toward which to direct my students' new found interest, and I will feel the loss of a great source of joy in my own life as well.

I beg of the Court of Appeals to enjoin Star WNCN Inc. from denying the New York area its only consonant source of classical music.

Any help I can give to efforts which protect WNCN I will gladly give. Please make copies of this letter available to the New York Circuit Court of Appeals for the District of Columbia Circuit, and please keep me informed of developments.

Sincerely,

Stanley M. Jay

Stanley M. Jay
Adjunct Assistant Professor

715 Ocean Terrace / Staten Island / New York 10301 (212) 390-7719

Staten Island Community College of the City University of New York is administered by the Board of Higher Education under the program of the State University of New York

A 206

D-15

[illegible] Park Ave
[illegible] NY 10128

[illegible],

What a black day; I'm devastated. No more WNCN. I can't bear it. It was such a perfect station, at least for me. I am young, single and working; I can not afford to buy the classical music I've only in the last two years learned to love. So I turned to WNCN to listen and learn. I even spent the extra money on an FM radio for my car. The store I work in was permanently tuned to WNCN. Now where do we go?

Please get it back on the air. If I can help in some way I'll gladly do it.

Jessica Lange

ONLY COPY AVAILABLE

D-16

A 207

111 S. 4th Ave.
Highland Park, NJ 08904

November 8, 1974

WNCN Listeners' Guild
663 Fifth Avenue
New York, NY 10022

Dear Fellow Ex-listeners,

I was fortunate enough to turn to WBAI on Wednesday night...WNCN was playing something a little boring and I decided to see what I would be up against when they went off... and I heard your program. I had no idea that there was that much hope for saving WNCN. Then, yesterday, I listened to WNCN's last few hours. I had somehow visualized it sort of softly passing away. Instead, there was an obscene defilement of Beethoven, following a similarly obscene truncation of Mozart and some pop sociology delivered by a contemptuous punk. I am really hacked off. If I could stand to listen to the new format, I would like to boycott all of the advertisers. But I will probably never learn who they are. I am 29, and my wife and I appreciated rock until the Beatles broke up and glitter started, but I think this has finished me off for rock.

Anyway, I have the transition on tape, just listened to it for the third time, and each time I have been even more outraged. I am also starting to resent the mixture of ads and garbage I have to listen to on WQXR to get a little classical music. So I am sending you a check. I wish we were richer, but $10 is about all we can afford just now. I wish everybody could have heard the program that was on WBAI, you'd get a lot more $$. Frank Deis

Frank Deis

D-17

A 208 COSMOPOLITAN

Mallen DeSantis, Beauty Editor
224 West 57th Street, New York, New York 10019, (212) 262-7910

November 7, 1974

WNCN Listeners' Guild
663 Fifth Avenue
New York, N.Y. 10022

Dear Sirs:

This is to assure you of my support in your efforts to keep the classical music programming of WNCN in effect.

It would truly be a minor tragedy in the lives of many, many New Yorkers if the station were permitted to switch to rock music, and I hope this will not be allowed. I, for one, am very dependant on the station's fine music programming, and I hate to think of all the housebound listeners -- many of them elderly or in poor health -- who would suffer acutely from the deprivation of WNCN's classical music.

In the event you wish to contact me about a pledge, my home address is 785 West End Avenue, New York, N.Y. 10025.

Sincerely,

Mallen DeSantis

D-18

New York, November 8, 1974.

WNCN Listeners Guild,
663 Fifth Avenue,
New York, NY 10022

A 209

Dear Sirs,

As one of the many listeners who miss - indeed, mourn! - WNCN, I am writing to you to pledge my support for any action you may take to reverse the present situation and give us back an invaluable source of culture and pleasure.

Sincerely,

María del Carmen Pizarro,
Room 1486, United Nations,
New York, NY 10017.

A 210

EXHIBIT E

November 7, 1974

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

General Manager
Starr-WNCN, Inc.
Two West 45th Street
New York, New York 10036

Dear Sir:

On Wednesday evening, November 6, 1974, at approximately 10 pm, WBAI broadcast a program produced by the WNCN Listener's Guild which presented their point of view and that of Classical Radio for Connecticut on the impending format and call letter change of Station WNCN from classical to progressive rock. Since we consider this question to be a "controversial issue of public importance" as defined under the Fairness Doctrine of the Federal Communications Commission, we are prepared to provide a copy of the tape as broadcast as well as time for Starr-WNCN, Inc. to present its side of this issue.

If you are interested in acting on this offer, please contact me promptly to arrange its implementation.

Sincerely,

Larry Josephson
General Manager
WBAI-FM

LJ:kd
cc: WNCN Listener's Guild
Classical Radio for Connecticut

EXHIBIT F

A 211

A F F I D A V I T

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

KRISTIN BOOTH GLEN, being duly sworn, deposes and says:

I am general counsel to WNCN Listeners Guild and I make this affidavit in conjunction with the Guild's Fairness Doctrine Application before the Commission.

On Wednesday, November 6, 1974, the last day prior to WNCN's scheduled format change at approximately noon, I heard on the station a recorded announcement by Richard Clurman. Mr. Clurman'is chairman of the "Citizens Advisory Committee" appointed by William F. Buckley, Jr., Chairman of the Board of Starr Broadcasting. Mr. Clurman's announcement spoke of his Committee's attempts to save the classical format of WNCN by placing it on another channel. He said that every attempt would be made to keep the musical assets, including the staff, together, so that this might be accomplished, but that as yet he could report no successes in his committee's efforts. He solicited listener mail so that interested persons might be contacted once the format went off the air. The address given for this mail was 2 West 45th Street, New York City, the address of the station.

As this "announcement" clearly once again indicated only one side of the controversial issue of the future of WNCN's classical format, I immediately phoned the station to ask for an opportunity to present anoopposing viewpoint. Allen Eisenberg, the station manager, was not in but I was told that he would call me back. He did so subsequently and at approximately 3 o'clock

said that if I would prepare a statement he would "look it over". Accordingly, I wrote what I considered to be an extremely objective discussion of the other alternatives to moving the format to another channel, directed towards citizens' protest to the Federal Communications Commission. I cleared this statement with the appropriate members of the Guild's Executive Committee and with the Citizens Communication Center in Washington. At approximately 4 o'clock I took the statement to the station, where Mr. Eisenberg informed me that he would have to "study" it further.

I returned to my office and at approximately 5:15 Mr. Eisenberg called to say that I could come and tape the statement precisely as written, at the station. I proceeded to the station where I taped the statement and was told that it would be played on an hourly basis until the format went off the air the following morning at 11 A.M. On information and belief, the statement was played 4 times at approximately 6:30, 7:30, 8:30 and 9:30 P.M., but was not played subsequent to that, although Mr. Clurman's statement was broadcast on an hourly basis.

Upon awakening on Thursday morning and turning on WNCN, as is my wont, I was surprised that over the hour period in which I listened, my statement was not broadcast. I called the station and asked to speak to the announcer who told me that the log contained a notation signed by Larry Miller, assistant station manager, that my statement had been canceled by order of William F. Buckley, Jr. A copy of this log notation is attached as Exhibit A.

I asked to speak to someone from management but was told that no one was yet there. At approximately 9 o'clock I spoke to Paul Wachsmith, the assistant sales manager, who said that he knew nothing whatsoever about the matter, but would make inquiry. At

approximately 9:15 A.M. I was called by Mr. Eisenberg, who gave me no reason for the tape having been taken off the air, but who stated that it would be played one more time, as indeed it was.

The time period in which the tape was not played was a most significant and crucial one. Many of WNCN's most devoted listeners tune in at approximately 10 P.M. and the program which begins at 11 P.M., "Music Through the Night", is a particularly popular one, with a devoted and loyal following. Additionally, the morning hours from approximately 7 to 8:30 are hours of peak listener concentration, as most listeners turn the station on when they arise and listen to it until they go to work. Although Mr. Clurman's tapes were aired on an hourly basis during this period, WNCN's listeners were deprived of hearing the Guild's opposing view at the same time.

There is no question but that even a very limited exposure of the Guild's position caused incredible listener response. In the first two available mail days after the tape was played and the format went off the air, more than 1,000 letters were received by the Guild, a number enormously in excess of the previous daily rate. The two phone lines were totally jammed and it was impossible for people to reach the Guild for information. Many listeners called me personally as they were unable to reach the Guild, and expressed enormous frustration, not only at the loss of the format but that they had not known previously of the legal actions which could be taken to prevent it.

I also had occasion to talk subsequently to Mr. Clurman about the content of his tape and when I asked if he had ever con-

tacted members of the staff to get them "together" as he had suggested on the tape, he told me that he had never done so.

Kristin Booth Glen
KRISTIN BOOTH GLEN

Sworn to before me this
20th day of November, 1974.
Michael David Kaitner

MICHAEL D. KAITNER
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-3211515
Qualified in New York County
Commission Expires March 30, 1975

FILM COVER SHEET ANNOUNCERS SIGNATURE

1:45 A.M. Cancelled Chris Glenn Statement per Larry Miller
on instructions from Wm. F. Buckley, Jr.

Also 12:50 A.M.

Also 2:40 A.M.

Also 4:00 A.M.

Also 5:00 A.M.

Also 6:00 A.M.

Day Wednesday

A 216

Date Nov. 6, 1974

TAPE COVER SHEET

ANNOUNCERS SIGNATURE

12:00 Midnight - C. Glenn Statement
Cancelled by Larry Miller
on instructions from Wm. F. Buckley, Jr.
H P Leatwood

WNCN/ Fairness docket

A 217

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In Re	)
	)
Fairness Doctrine Complaint of	)
WNCN Listeners' Guild	)
	)
against	)
	)
Starr Broadcasting Group, Inc.	)
Licensee of Radio Station WQIV(FM)	)
(formerly WNCN(FM)),	)
New York, New York	)

MEMORANDUM OPINION AND ORDER

Adopted: December 4, 1974 ; Released December 5, 1974

1. The Commission, by the Chief of the Broadcast Bureau, acting pursuant to authority delegated by Section 0.281 of the Commission's Rules, has under consideration (1) a Motion for Extension of Time to Oppose Application for Review, filed on November 15, 1974 by Starr Broadcasting Group, Inc. (Starr), licensee of WQIV(FM) (formerly WNCN(FM)), New York, New York; and (2) an Opposition to Starr's Motion for Extension of Time, filed on November 22, 1974, by counsel for the WNCN Listeners' Guild (Guild).

2. In its Motion for Extension of Time counsel for Starr stated that this case has necessitated numerous pleadings before both the Commission and the United States Court of Appeals for the District of Columbia; that the preparation of these pleadings required WNCN's counsel "to postpone meeting prior professional commitments" which now must be met; that the preparation of affidavits to answer the allegations in the Application for Review will require extra time; and that "no prejudice or any detriment will result from a grant of the instant extension request" because there is no "urgency or need for expeditious Commission action to resolve the Guild's fairness complaint."

3. The Guild's Opposition to the Motion for Extension of Time gave a detailed description of the protest raised by private citizens, various news outlets, and state and local governmental bodies, and stated that "any delay, for any reason would itself be a violation of that 'public interest' standard which mandates the Commission in all its determinations." The Guild also stated that Starr's Motion for Extension of Time "disregards both the Commission's settled procedures and the procedural and substantive rights of the Guild and its members" in that Starr already filed its opposition to the Guild's petition on October 4, 1974, and Starr should not now be permitted to submit another opposition "after the Guild has already filed its Reply."

4. The Commission has, in the past, permitted reasonable extensions of time for the filing of pleadings upon a showing of good cause. Starr contends that because of the large number of pleadings involved in this case an extension of time for the filing of its opposition to the Guild's Application for Review is warranted. Thus far on all issues in this case there have been in excess of thirty pleadings filed with the Commission, six Commission rulings or pronouncements, more than twenty pleadings filed in Court, and seven Court Orders. It would therefore appear that Starr's request for an extension of time should be granted unless the Guild can show a compelling need for an immediate Commission determination on their Application for Review.

5. The Guild contends that Starr's Motion for an Extension of Time "disregards both the Commission's settled procedures and the procedural and substantive rights of the Guild and its members" because Starr had already filed on October 4, 1974 its Opposition to the Guild's Petition of September 23, 1974. This contention indicates a basic misunderstanding on the part of the Guild as to the numerous issues raised in its complaint, the contents of the numerous pleadings submitted thereon, and the provisions of the Commission's rules relating to the pleadings to be filed in connection with an Application for Review.

6. In its petition of September 23 the Guild not only made a fairness doctrine complaint, but it also sought a stay of WNCN's format change from classical music to progressive rock, and also sought to have the Commission either revoke Starr's license to operate WNCN or else require Starr to immediately submit a license renewal application. The fairness doctrine complaint was and is separate and distinct from the other issues raised. The Broadcast Bureau issued its fairness doctrine ruling on October 3, 1974. The Guild filed its Application for Review pursuant to Section 1.115 of the Commission's Rules on November 4, 1974. Section 1.115 specifically provides for the right of other parties to file Oppositions to an Application for Review. The Guild cannot now seriously contend that a pleading filed on October 4, 1974, which did not even address the fairness doctrine issue 1/, would now preclude WNCN from filing an opposition to the Guild's Application for Review which was filed on November 4.

7. The fact that WNCN's format and call sign change may continue to be controversial in its service area or that the management of WNCN (now WQIV) may have refused to afford the Guild time to present its viewpoint is irrelevant to a determination of whether Starr should be granted an extension of time in order to file an opposition to the Guild's application for review

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1/ The pleading which the Guild characterizes as "an extensive Opposition to the Petition" filed on October 4, 1974, which should now bar WNCN from submitting "another Opposition," was directed entirely towards the Guild's petition for a stay of the format change and to revoke WNCN's license and/or to require WNCN to immediately submit a license renewal application. Nowhere in that pleading did WNCN address the issue of the fairness doctrine complaint, which had been decided the day before the October 4 pleading was filed.

of the Broadcast Bureau's fairness doctrine ruling. The issue under consideration here is not the merits of the Application for Review, but whether there is a compelling need for immediate Commission resolution of the Application for Review. The Guild has failed to show that granting Starr's motion for extension of time would in any way adversely affect its rights or those of other former WNCN listeners, or that it would in any way affect the outcome of this proceeding. On the contrary, the Guild asserts that "[e]ven an immediate grant of comparable air time would be meaningless as the old classical listening audience is clearly no longer tuned to the new rock station." The Guild further states that the "true remedy for the fairness issue, as for all Starr's alleged illegal acts, is a return of the call letters and the format to 104.3 on the dial" and that the Commission should impose "interim remedies, including fines." Without addressing the merits of the fairness doctrine remedies suggested by the Guild, they are totally irrelevant to the issue of whether or not Starr's motion for an extension of time should be granted.

8. In view of the foregoing, IT IS ORDERED, pursuant to Sections 0.281 and 1.46 of the Commission's Rules, that the time for Starr Broadcasting Group, Inc., to file its Opposition to WNCN Listeners' Guild's Application for Review is hereby extended to December 16, 1974.

FEDERAL COMMUNICATIONS COMMISSION

Wallace E. Johnson

Wallace E. Johnson
Chief, Broadcast Bureau

RECEIVED DEC 12 1974

WNCN Fairness

A 220

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In Re	)
	)
Fairness Doctrine Complaint of WNCN Listeners' Guild	)
	)
against	)
	)
Starr Broadcasting Group, Inc. Licensee of Radio Station WQIV(FM) (formerly WNCN(FM)), New York, New York	)

PETITION FOR EXTENSION OF TIME

Starr WNCN, Inc., licensee of WQIV, New York, New York, by its attorneys, hereby respectfully requests a further extension of time to and including December 23, 1974 to oppose the Application for Review, filed by the WNCN Listeners' Guild, against the Broadcast Bureau's October 3, 1974 fairness doctrine ruling. In support thereof, Starr states as follows:

On November 4, 1974, the Guild requested the Commission to review the Broadcast Bureau's ruling of October 3, 1974 that no action was warranted on the Guild's fairness doctrine complaint against WQIV (formerly WNCN) New York, New York. By Memorandum Opinion and Order, released December 5, 1974 the Commission, by the Chief of the Broadcast Bureau, acting pursuant to authority delegated by Section 0.281 of the Rules, granted Starr an extension of time to and including December 16, 1974 to file its Opposition to the Guild's Application for Review. Starr respectfully requests a further brief extension to and including December 23 for reasons stated below.

Counsel primarily responsible for preparing the opposition is out of the office gathering the materials which will enable Starr to respond to the factual allegations contained in the Application for Review and supporting affidavit.[1/] Counsel responsible for coordinating the filing of pleadings before the Commission in this protracted and columinous proceeding is also out of the office as a result of the FCC's field investigation into the allegations raised by the Guild. Given these circumstances, additional time will be needed to complete the information gathering process and to prepare the opposition.

As was noted in the Memorandum Opinion granting Starr's previous request (par. 4):

> "The issue under consideration here is not the merits of the Application for Review, but whether there is a compelling need for immediate Commission resolution of the Application for Review. The Guild has failed to show that granting Starr's motion for extension of time would in any way adversely affect its rights or those of other former WNCN listeners, or that it would in any way affect the outcome of this proceeding."

Starr is unaware of any facts and circumstances which have occurred since the issuance of this Memorandum Opinion on December 5 which would serve to alter the Commission's conclusion. Nor does it perceive how a brief extension of five business days, and seven days in all, could possibly materially adversely affect the rights of interested parties. The Commission may be assured

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1/ Counsel arrived in New York City at 9 a.m. yesterday and does not expect to return to Washington before the close of business tomorrow. Counsel is presently devoting virtually his full time to this proceeding.

A 222

though that Starr will make every effort to file its opposition as soon as reasonably possible.

WHEREFORE, pursuant to Section 1.46 of the Rules, Starr respectfully requests an extension of time to and including December 23, 1974 to file its Opposition to the Guild's Application for Review.

Respectfully submitted

Starr WNCN, Inc.

By _____
James K. Edmundson

Fly, Shuebruk, Blume and Gaguine
1211 Connecticut Avenue, N. W.
Washington, D. C. 20036

Its Attorneys

Date: December 12, 1974

CERTIFICATE OF SERVICE

I, Jane M. Walsh, a secretary in the law offices of Fly, Shuebruk, Blume and Gaguine, do hereby certify this 12th day of December, 1974, that I mailed a copy of the foregoing "PETITION FOR EXTENSION OF TIME," postage prepaid, or caused it to be personally served, to the following:

Charles M. Firestone, Esq.
Frank W. Lloyd, Esq.
Citizens Communications Center
1914 Sunderland Place, N. W.
Washington, D. C. 20036
Counsel for the Guild

Ms. Kristin Booth Glen
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New York, New York 10017
Counsel for the Guild

David M. Rice, Esq.
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Counsel for Classical Radio for Connecticut

Jane M. Walsh

FOR RESPONSIVE MEDIA:
CITIZENS COMMUNICATIONS CENTER
1914 SUNDERLAND PL., N.W., WASHINGTON, D.C., 20036 (202) 296-4228

A 224

December 19, 1974

RECEIVED
DEC 19 1974
F. C. C.
OFFICE OF THE SECRETARY

Vincent J. Mullins, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D. C. 20554

Re: Fairness Doctrine Complaint
against WNCN, New York, N.Y.

Dear Mr. Mullins,

On October 3, 1974 the Chief of the Broadcast Bureau ruled that no action was warranted on the complaint of the WNCN Listeners' Guild against Radio Station WNCN, New York, New York. The staff decision was particularly notable for its failure even to acknowledge the Guild's basic contention: that a higher standard applied to this fact situation than the normal fairness case since Starr WNCN, Inc., the licensee of the station, was personally and financially involved in the controversial question of public importance. See, e.g., Springfield Television Broadcasting Corp., 4 R.R.2d 681, 685, ¶5 (1965), cited in the Guild Reply of September 30 at pp. 6-7, and in other documents filed with the Commission prior to the October 3 ruling.

The Guild applied to the full Commission for review of the staff's ruling on November 4, 1974. On November 15, 1974 Starr requested a month's extension of time from the Commission to respond to the application for review. Starr indicated in that pleading that it was planning to file a further opposition to the Guild's original petition filed on September 23, 1974, and that this would take some time away from its efforts to file against the fairness appeal. The Guild opposed the request, stating that one opposition is all the rules provide for, and that it was improper to allow an extension for Starr's opposition to the fairness appeal based in part on the licensee's efforts in preparing an unauthorized pleading.

Expecting the Commission to rule on whether Starr would be allowed the month's extension in the appeal of the Broadcast Bureau's ruling, the Guild was dismayed by the Commission's again delegating this matter to the Chief of the Broadcast Bureau. It does not seem fair to allow the authority being appealed from to decide how much time the party in whose favor it ruled has to respond to the application for review.

The Guild was further disturbed by the Chief of the Broadcast Bureau's failure again to understand the Guild's position in the matter. He seemed to believe that the Guild, in expressing concern over Starr's intention to file a further opposition to the Guild's original petition for revocation (September 23), was trying to prevent Starr from opposing the November 4 application for review of his fairness ruling to the Commission.

The Guild is convinced that the Broadcast Bureau is, for some unknown reason, unable to comprehend the Guild's explicitly stated positions. This problem, however, simply points out a more basic problem with the Commission's procedures.

We do not believe it is fair that the same person in the Commission who works on the original order also be assigned to work on the appeal from that order. The Chief of the Broadcast Bureau has an obvious interest in providing the party in whose favor he ruled an advantage on appeal from that ruling. The Guild appealed to the Commission in the requisite 30 days and it is not fair for the Broadcast Bureau to be able to extend the time to Starr to oppose the ruling.*

More importantly, it is not fair for the same person who wrote what can euphemistically be called a bad decision to work on the substantive appeal from that decision. We expect the Commission to review de novo the pleadings as they relate to the Fairness Doctrine, and to apply its reasoned judgment to the facts.

Accordingly, the Guild requests the Commission to provide assurances that a separated staff will work on the Fairness appeal in this case. The Commission might also consider general procedural reform to correct this problem in its adjudicatory system.

If a formal motion is necessary, beyond this letter, please notify us.

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*The Guild notes, in addition, that Starr has requested an additional week's extension of time on the Fairness opposition. The Guild continues its objection against both the extension and the Broadcast Bureau's consideration of the request.

Respectfully submitted,

Kristin Booth Glen

Kristin Booth Glen
30 E. 42nd Street
New York, New York 10017

Frank W. Lloyd

Charles M. Firestone

cc: All Commissioners
W. Louise Florencourt, Esq.
Ashton R. Hardy, General Counsel
Howard Braun, Esq.
David M. Rice, Esq.
Samuel Frankel, Esq.

WNCN. FCC Fairness

A 227 Dkt of Fc

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In Re	)
	)
	)
Petition for Revocation of License of STARR BROADCASTING GROUP, INC.	)
	)
to operate	)
	)
Station WNCN-FM, New York, New York	)
	)
or	)
	)
Immediate Submission of Renewal Application	)
	)
and	)
	)
Resolution of Fairness Doctrine Complaint and Other Relief	)

To: The Commission

OPPOSITION OF STARR WNCN, INC. TO APPLICATION FOR COMMISSION REVIEW OF FAIRNESS COMPLAINT DECISION

Starr WNCN, Inc. (Starr), licensee of WQIV(FM), New York, New York, by its attorneys, hereby opposes the WNCN Listener's Guild's ("Guild") Application For Review of the October 3, 1974 ruling of the Commission's Broadcast Bureau staff holding that no action was warranted on the Guild's fairness doctrine complaint against WQIV(FM) (formerly WNCN(FM)), New York.

In support thereof, it is stated as follows:

I. Preliminary Statement

1. By letter dated October 3, 1974, the Chief of the Complaints and Compliance Division of the Broadcast Bureau informed the Guild that no action was warranted on its complaint that certain announcements aired over WNCN mentioning WNCN's proposed change of format [1] and requesting listeners fond of that format to pledge money to the "Save WNCN" Committee to sustain that format on another FM (non-commercial) station, raised a controversial issue of public importance. WNCN Listeners Guild, 31 RR 2d 816 (1974). After carefully evaluating the parties' respective allegations, the staff emphasized that "...it is both the responsibility and within the discretion of a licensee to determine whether a controversial issue of public importance has been presented in its programming, and that the burden is on the complainant to establish that the licensee's...judgment in such matters was unreasonable or in bad faith." Gary Lane, 38 FCC 2d 45 (1972) review denied, 39 FCC 2d 938 (1973). The staff further noted that in reviewing fairness complaints, the Commission's review function is limited solely to determining "...whether the licensee can be said to have acted reasonably and in good faith."

1 / On November 7, 1974, WNCN changed its classical music format to progressive rock and changed its call letters to WQIV(FM).

Id. at 818.

2. The staff, however, did not make a determination whether WNCN's format change constituted a controversial issue of public importance. Instead, it assumed arguendo that the change of WNCN's format presented a controversial issue of public importance and held that:

> "...after reading the transcripts submitted by both you [Guild] and WNCN-FM we cannot say that WNCN-FM was unreasonable in determining that the announcements in question 'simply took note of WNCN's change of format' and did not argue the merits of the change."
>
> "In Gary Lane, supra, it was held that a licensee may reasonably determine that a discussion which is 'focused on' a non-controversial issue does not become a presentation on a controversial issue of public importance merely because it 'touched upon...incidentally' a subject which may be controversial. Here it can reasonably be said that the announcements urging listeners to pledge money to support continued classical music programming did not advocate a position on the dispute over whether WNCN-FM should change its format. The finding of a judgment within the bounds of reason, whether or not it is the same judgment we would reach as an initial matter, is dispositive of our function under the fairness doctrine." Id. at 818. 2 /

As will be demonstrated below, the staff's ruling was correct and, accordingly, should be affirmed by the Commission.

3. Section 1.115 of the Rules specifies the form of an Application For Review and requires, inter alia, that a petitioner

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2 / The staff also referred to the Commission's statement in the Fairness Report, 48 FCC 2d 1 (1974), that while licensees have an affirmative responsibility to cover controversial issues of public importance:

> "[W]e have no intention of becoming involved in the selection of issues to be discussed, nor do we expect a broadcaster to cover each and every important issue which may arise in his community". Id. at 819.

state "concisely and plainly" the questions presented for review, and "specify with particularity" from enumerated criteria, the factors warranting Commission review of the questions presented. Section 1.115(a) and (b). Apart from the fact that the Guild has paid no heed to these requirements thereby rendering its petition procedurally defective, the Guild appears also to have lost sight of the narrow legal questions presented herein: (1) whether WNCN's format change constituted a controversial issue of public importance; and (2) if so, whether the staff's ruling that WNCN acted reasonably and in good faith in determining that the announcements in question did not raise one side of a controversial issue was proper.

4. The Guild has argued herein and in other pleadings that Starr's management had no right to change WNCN's format. Starr urges that a decision to change a format is committed by law solely to a licensee's discretion. However, without regard to the merits of either position, that is not the issue involved herein, nor is this the forum in which to argue same. 3/

5. One further point warrants comment. In its Application For Review and subsequently filed documents relating to the matter at issue herein, the Guild has interjected erroneous,

3/ As both the Guild and the Commission have been apprised, Starr shortly will file a supplemental pleading with the Commission addressing itself to the various allegations made by the Guild relating to WNCN's format change.

reckless, irrelevant and purely speculative allegations relating to Starr's character, candor and its dealings both with the Commission and the Guild allegedly relating to the purported fairness controversy. Such attempted "character assassination" has no place here or in any other pleading filed in this proceeding. In any event, so that the record is clear on these matters, they will be discussed infra for the Commission's convenience.

II. Argument

A. WNCN's Format Change As A Matter Of Law Did Not Present A Controversial Issue Of Public Importance

6. The preliminary threshhold question involved in this case is whether--as claimed by the Guild--the proposed change in WNCN's format constituted a controversial issue of public importance requiring Starr to afford a reasonable opportunity for the presentation of contrasting views thereon. Starr believes and accordingly urges that, as a matter of law, WNCN's proposed format change does not constitute such an issue.

7. In considering the Guild's complaint, the staff did not rule on this point. Rather, the staff assumed arguendo that even if WNCN's proposed format change constituted a controversial issue of public importance, Starr's determination that

the announcements in question did not present one side thereof was reasonable.[4/]

8. On review of the staff's ruling herein, however, Starr submits that the Commission should find that, as a matter of law, WNCN's proposed format change did not constitute a controversial issue of public importance. This is so in part because format changes are a management decision and committed solely to a licensee's discretion, as the Commission repeatedly has held. It, therefore, really makes no difference whether certain segments of a community are either for or against such a format change. Surely, a station which decides to make a format change and does not argue the merits of same on the air, as is the case here, should not be required to provide time to opponents of said change merely because some citizens prefer the station's existing format. For there is never a change of any kind which is backed unanimously by a community.

8-A. A story does not become a "controversial issue of public importance" simply because it is newsworthy and attracts the attention of the mass media. Healey v. F.C.C., 460 F.2d 917

4/ Starr submits that implicit in the staff's ruling is its assumption arguendo that Starr erred in its determination that WNCN's format change did not present a controversial issue of public importance. But, as will be demonstrated in Point B infra, Starr's good faith judgment on this question was reasonable and, consequently, should be upheld.

(D.C. Cir. 1972). The mere fact that local groups are embroiled in disputes concerning a station's programming requires no conclusion that the choice of programs is either controversial or of public importance. Letter to Jack Baker, Esq., December 11, 1974. A station's decision to change its musical entertainment format should be treated no differently.

9. In short, the purpose of the fairness doctrine is to insure that the public will be adequately informed on critical and significant issues of public importance to major segments of the community--issues which will have a substantial impact

on the community at large. Fairness Report, supra at 12. The change of WNCN's musical format cannot be said to qualify as such an issue in the context of this case.

B. Starr's Reasonable And Good Faith Determination That WNCN's Format Change Did Not Constitute A Controversial Issue Of Public Importance Should Not Be Overruled

10. Should the Commission be unable to make the legal finding urged upon it in Point A above, Starr submits that its good faith and reasonable determination that WNCN's format change was not a controversial issue of public importance should nevertheless be affirmed by the Commission upon review herein, since the staff ruling also did not address itself to this question.

11. Because of the "limitless number of potential controversial issues" and "the varying circumstances in which they might arise", the Commission has traditionally shunned developing detailed criteria for determining what constitutes controversial issues of public importance. Fairness Report, 48 FCC 2d at 11 (1974). "For this very practical reason, and for the reason that our role must and should be limited to one of review, we will continue to rely heavily on the reasonable, good faith judgments of our licensees in this area". (Emphasis added). Ibid., Healey v. FCC, 460 F. 2d 917 (D.C.Cir., 1972);

Brandywine-Main Line Radio, Inc. v. FCC, 473 F. 2d 16 (1972), cert. denied, 412 U.S. 922 (1973). Wide journalistic discretion is thus accorded broadcasters in this area and the Commission has "...no intention of becoming involved in the selection of issues to be discussed" by a licensee. Moreover, nor does the Commission expect a "...broadcaster to cover each and every important issue which may arise in his community." Fairness Report, supra at 10.

12. Starr's determination that WNCN's format change did not constitute a controversial issue of public importance accordingly must be evaluated in light of the foregoing criteria. And when so judged, it is clear that the heavy burden cast upon the Guild to establish that Starr has forsaken the standards of reasonableness and good faith entrusted to it in this sensitive area has not been met. The Commission accordingly should "rely heavily" on the reasonable and good faith judgment exercised by Starr on this question and affirm Starr's judgment.

C. The Staff's Ruling That Starr's Broadcast Of The Announcements In Question Did Not Invoke Any Fairness Obligation On Starr's Part Was Correct And Should Be Affirmed

13. In its ruling, the staff assumed arguendo that even if WNCN's format change raised a controversial issue of public importance, consideration of the various announcements submitted by the parties relating to said change and the "Save WNCN" Committee when read in the light most favorable to the Guild, required

a finding that Starr acted reasonably in determing that such announcements did not present one side of a controversial issue since such announcements simply took note of WNCN's format change, and did not argue the merits thereof. Additionally, the staff concluded that in any event, it reasonably could be said that the announcements urging listeners to support continued classical music programming did not advocate a position on the question of whether WNCN should change its format. The staff thus properly held that Starr was under no fairness obligation to seek out contrasting views on the purported issue in question.

14. Without conceding that the issue of WNCN's format change was a controversial issue of public importance or that Starr exercised faulty judgment in determining that it was not, Starr submits nonetheless that for the reasons stated therein, the staff's rulings were correct and predicated upon well-established precedent. See paras. 1 and 2, supra. Further review of those rulings by the Commission is therefore unnecessary and unwarranted.

15. In short, the thrust of the announcements in question was clearly upon securing pledges to support a classical format on a non-commercial station and not at all upon the merits of management's decision to alter WNCN's format. Since Starr

did not advocate or present one side of an alleged controversial issue of public importance, it was under no obligation to seek out or present contrasting viewpoints. While the Guild obviously disagrees with the staff's ruling herein, Starr's wide discretion and latitude in this area must be respected, even though under the same facts, the Guild (or the Commission) might have reached a contrary conclusion. As the staff emphasized: "The finding of a judgment within the bounds of reason, whether or not it is the same judgment we would reach as an initial matter, is dispositive of our function under the fairness doctrine." WNCN Listeners Guild, Id. at 818.

D. In Any Event, Assuming Arguendo That The Announcements In Question Presented One Side Of A Controversial Issue Of Public Importance, Starr Has Fully Discharged Its Fairness Obligations

16. In the unlikely event that the Commission may disagree with the staff's ruling and hold that Starr was under a fairness obligation to seek out contrasting views on the proposed format change, the following will clearly demonstrate that Starr has acted in good faith and has voluntarily met that obligation. In short, Starr has provided more than a reasonable amount of time to programming relating to WNCN's format change and the Guild's views thereon, including news and announcements about the Guild's

activities and its litigation with Starr, and affording free time to the Guild's General Counsel (Ms. Glen) to present the Guild's views opposing the format change.[5/]

5 / While the Guild claims (App. For Rev., pp. 3-4) that as to an issue in which a licensee has a personal interest "a higher standard of good faith discretion is required in judging its refusal to air contrasting viewpoints", citing Springfield Television Broadcasting Corp., 4 RR 2d 681, 685 (1965), that case imposes no such standard upon a licensee, nor to our knowledge has the Commission ever imposed such a standard upon a licensee. What the Commission said in Springfield, inter alia, was that the fact that a licensee editorialized upon a controversy in which it was personally involved was immaterial so long as its editorials were based upon a good faith judgment of the needs and interests of its community. That, however, is a totally different point from the one advocated herein by the Guild In any event, the actions by Starr relating to this matter meet any reasonable standard that would be imposed.

17. Assuming arguendo that the WNCN format change was controversial and that Starr's announcements addressed thereto raised one side of that issue,[6/] WNCN would have been obligated to present a "reasonable opportunity" in its overall programming for the presentation of contrasting views. Since there is no mechanical formula for achieveing fairness (see Mid-Florida Television Corp.,40 FCC 620 (1964)), the Commission has held that the public is best served by a system which allows individual broadcasters wide latitude and discretion in selecting the manner of coverage, the appropriate spokesmen and the techniques of production and presentation. Fairness Report, supra at 16. In fact, in opinion after opinion, the Commission and the courts have stressed that the key to the fairness doctrine is no mystical formula but rather the exercise of reasonable standards by the licensee. See Democratic National Committee v. FCC, 460 F. 2d 891, 900, (D.C. Cir.), cert. denied, 409 U.S. 843 (1972) and cases cited therein.

18. If Starr's presentation of newscasts and announcements relating to WNCN's format change and its airing of the Guild's views on November 6 and 7, 1974 are judged against this "reasonable" standard, Starr cannot be found to be wanting in any material respect. For contrary to the Guild's erroneous

6/ As noted in paragraph 2 above, the staff properly concluded that the announcements in question did not raise one side of a controversial issue.

contentions, Starr has not "consistently deprived its audience of access to contrasting viewpoints" on the WNCN format change. (App. for Rev., pp. 8-10).[7]

19. Specifically, as the attached Affidavit of Allan J. Eisenberg makes clear, from September 16, 1974, the day Mr. Eisenberg assumed the position of General Manager of WNCN, right up until the day the format was changed on November 7, 1974, WNCN's audience was continually informed of significant and substantial developments regarding the efforts of the "Save WNCN" Committee and the ensuing litigation between the Guild and WNCN. As the Commission already has been apprised,[8] news reports and other announcements relating to the WNCN format change and to the Guild's litigation concerning same before the Commission and the Court of Appeals were aired over WNCN on September 28 and October 1 - 3, 1974 at frequent intervals.

20. Within the framework of WNCN's hourly newscasts from September 16--November 7, 1974, WNCN's audience was kept apprised of important and newsworthy developments relating to the Guild's litigation with WNCN. Numerous on-the-air an-

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7 / The Guild's contentions are based upon Starr's October 30 rejection of the Guild's offer to purchase time over WNCN to present the Guild's views. See also Affidavit of Robert J. Schack, President of the Guild, filed with the Commission on November 5, 1974. While Starr management had discussed with Guild representatives the possibility of airing a proposed program by the Guild, a corporate decision was made by Starr management late in the afternoon of October 30 not to air the Guild's program, and this decision was communicated to Mr. Schack by Richard Oppenheimer, Starr's Vice President. It should be emphasized that Starr was under no legal obligation to air such a program and as the Guild concedes, Starr never made a definite commitment to broadcast any programs submitted by the Guild. In any event, Starr subsequently aired on November 6 and 7, 1974 without cost to the Guild, the Guild's views on WNCN's format change.

8 / See letters of Starr's counsel to the Commission dated October 3 and 10, 1974, which included copies of the reports and announcements in question.

nouncements also were made by WNCN personnel during this same period to inform WNCN's audience about the progress of the Guild's endeavors and its litigation with WNCN. As Station Manager (and News Director) during this period, Mr. Eisenberg has stated his belief that WNCN's overall coverage of the Guild's activities and litigation with WNCN "has been accurate and balanced". Eisenberg Affidavit, pp. 1-2. 9/

Significantly, although under no legal obligation to do so, Starr voluntarily provided free air time to Ms. Kristin Booth Glen, General Counsel to the Guild, to present the Guild's views on the WNCN format change. The Guild's views were aired on five separate occasions during prime time on November 6, 1974, and again at 9:30 a.m. on November 7, 1974. 10/

A copy of Ms. Glen's statement, as aired, is annexed as Exhibit A to Mr. Eisenberg's affidavit.

9 / As Mr. Eisenberg explains, since the Guild had obtained a preliminary injunction from the Court of Appeals on October 5, greater emphasis in WNCN's hourly newscasts was given to the Guild's activities and litigation with WNCN from October 5 to November 7, 1974. Announcements also were aired by the station's announcers concerning the Guild's activities and litigation with WNCN during this same period with greater frequency than before. Eisenberg Affidavit, pp. 2-3.

10 / The circumstances leading up to WNCN's offer of time to Ms. Glen are set forth in pp. 3-5 of Mr. Eisenberg's Affidavit. For the Commission's information, Ms. Glen's statement was aired at 6:27 p.m., 7:22 p.m., 8:30 p.m., 9:42 p.m. and 10:17 p.m. on November 6, 1974.

Although Ms. Glen has claimed that she was "told" that her statement would be aired hourly over WNCN (see p. 2 of Glen Affidavit attached to "Opposition To Starr's Motion For Extension Of Time (Fairne Complaint)..." filed by the Guild on November 22, 1974), Mr. Eisenberg, who was the station executive who spoke with Ms. Glen, has no recollection of making any such promise. Instead, Mr. Eisenberg states that he promised her that he would endeavor to broadcast her statement "frequently". (See Eisenberg Affidavit, para. 13).

In connection with the airing of Ms. Glen's statement, the Guild maintains that because said statement was allegedly "abruptly cancelled" by William F. Buckley, Jr. during the late night and early morning hours of November 6 and 7, 1974, the broadcasts cannot be considered either "good faith" or "voluntary cooperation" by Starr.[11] Starr submits that this assertion is wholly unfounded.

The circumstances leading up to the temporary suspension and subsequent reinstatement of Ms. Glen's statement over WNCN are fully set forth on pages 5-7 of Mr. Eisenberg's Affidavit. See also Affidavit of Larry Miller attached hereto. In short, because Mr. Buckley had been informed the night of November 6 that certain possibly improper statements were being broadcast by Ms. Glen over WNCN, Mr. Buckley instructed Mr. Miller, WNCN's Program Director, to temporarily halt the broadcast of Ms. Glen's statement until further notice so that he, Mr. Buckley, could ascertain first hand from Peter Starr whether Mr. Starr had heard and approved Ms. Glen's statement. Mr. Buckley was able to reach Mr. Starr in the early morning hours of November 7, 1974, and ascertained from him that Ms. Glen's statement was not objectionable. Thereafter, the statement was again aired by WNCN on November 7, 1974. At most, the short sus-

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11 / See Guild "Opposition" at p. 10 referred to in footnote 10 supra.

pension[12/] of the broadcast of Ms. Glen's statement can be attributed to nothing more than an effort on Mr. Buckley's part to ascertain whether the statement was in fact proper , and whether its broadcast had been approved by top management.

In sum, although Starr was under no fairness obligation to do so, the foregoing plainly demonstrates that Starr has acted reasonably and in good faith in presenting the Guild's views on the WNCN format change. The time devoted to such programming by Starr was more than a reasonable amount. Moreover, Starr has made a reasonable allowance "...for presentations by genuine partisans who actually believe in what they are saying." Fairness Report, supra at 15. Thus, even if the Commission were to find that Starr was obligated under the fairness doctrine, ample evidence exists for finding that Starr has not abused the broad degree of discretion entrusted to it under such doctrine. See Red Lion Broadcasting Company v. FCC, 395 U.S. 367 (1969); Columbia Broadcasting System v. Democratic National Committee,

12/ It is difficult to perceive of any injury flowing to the Guild arising from the short suspension of Ms. Glen's statement, particularly since that statement was aired 6 times, 5 of which were in prime time (6 to 11 P.M.), between November 6 and 7. Nevertheless, in a transparent effort to build its case, the Guild alleges that the early morning hours "from approximately 7:00 to 8:30 are hours of peak listener concentration" and thus it was important that Ms. Glen's statement be aired during those hours. See Glen Affidavit, p. 3 attached to Guild "Opposition" filed on November 22, 1974. Contrary to Ms. Glen's erroneous assertion, the station's ratings show only a sparse audience during that time period.

412 U.S. 94 (1973).

III. Other Matters Of Doubtful Relevance Raised By The Guild

A. The Purported Withholding Of Tapes By Starr Relating To The WNCN Format Change

The Guild claims that there were "material conflicts" between Starr's transcripts of 9 announcements aired over WNCN relating to the station's format change and the "Save WNCN" Committee, which announcements were submitted to the Commission in Starr's September 27, 1974 fairness reply, and the sampling of 18 similar announcements submitted by the Guild in its September 23, 1974 Petition. (App. For Rev., pp. 4-6). From this, the Guild jumps to the wholly unwarranted and fallacious conclusion that Starr lacks candor and has withheld additional announcements from the Commission, which announcements purportedly "most directly" argue the merits of WNCN's format change. There is absolutely no merit to the Guild's claim.

So that the record is clear on this question, transcriptions of the 11 taped announcements broadcast over WNCN by Mr. William F. Buckley, Jr., Ms.Elise Topaz and Mr. David Dubal from August 28 to September 15, 1974 are annexed to the attached Affidavit of Paul Wachsmith. Nine (9) of these eleven (11) announcements are the same ones which accompanied Starr's September 27,

1974 fairness reply to the Commission, and the remaining two announcements are reconstructed copies of two tapes which were accidentally erased. (See Exhibits A and B attached to Wachsmith's Affidavit).[13/] These 11 taped announcements were aired between 9 and 16 times each day from August 28-September 16, 1974 for a total of approximately 270 times. See Wachsmith Affidavit, pp. 1-2.

None of these 11 announcements comments upon or discusses the merits of WNCN's format change. Equally important, Mr. Wachsmith states that these were the only taped announcements aired over WNCN during August/September, 1974 taking note of the format change. Significantly, the Guild has made no showing to the contrary.

The Guild's obvious confusion on this matter stems from the fact that the majority of the transcripts of the 18 announcements which the Guild has submitted to the Commission in its September 23, 1974 Petition are transcriptions allegedly made by Guild representatives of ad lib (as opposed to taped) announcements made by WNCN announcers at frequent intervals

13/ When Starr submitted its September 27, 1974 response to the Commission, the tapes of the two announcements in question, which were prepared and aired by Ms. Topaz and Mr. Dubal, had been accidentally erased. Hence, they could not have been submitted to the Commission at that time. Subsequently, at Mr. Wachsmith's request, Ms. Topaz and Mr. Dubal each prepared to the best of her (his) recollection and belief the reconstructed announcement submitted herewith. See Wachsmith Affidavit, para. 4.

during the period in question.[14] No scripts are available of these ad libs, nor does Starr have any knowledge how many such announcements were made.

In any event, the basic thrust of these announcements and the instructions given to the WNCN staff regarding the content and airing of same by Mr. Wachsmith (the then WNCN General Manager), are fully detailed on pp. 2-3 of Mr. Wachsmith's Affidavit. Importantly, Mr. Wachsmith repeatedly gave explicit instructions to the WNCN announcers during the August 28 - September 16, 1974 period "...to refrain from making any on the air comments or engaging in any discussions relating to the merits of WNCN's musical format change"; and, Mr. Wachsmith knows of no instance during his tenure as General Manager where his instructions to the staff on this matter were violated.[15] Wachsmith Affidavit, p. 3.

14/ On October 2, 1974, the Guild filed a "Motion For Leave To File Supplemental Affidavit" of Robert J. Schack in which Mr. Schack states that the transcribed announcements submitted with the Guild's September 23, 1974 Petition were taped by Guild representatives. Moreover, while Mr. Schack alleges upon information and belief that the original tapes of the 11 WNCN announcements referred to in paragraph 19 above were erased, this is not true. As Mr. Wachsmith points out, 6 tapes still exist (of which the Commission is aware) which are virtually identical to 6 of the 9 transcripts submitted to the Commission in Starr's September 27, 1974 response. See Wachsmith Affidavit, p. 3.

15/ As Mr. Eisenberg states, however, after he became General Manager of WNCN, he was compelled to fire a station announcer (Bill Watson) for making improper and derogatory announcements about both the Guild and Starr. Eisenberg Affidavit, p. 3.

In sum, the purported "material conflicts" between the announcements submitted by Starr and those submitted by the Guild are illusory. Neither the 11 transcripts submitted by Starr nor any of the 18 transcripts submitted by the Guild discuss, argue or comment upon the merits of the WNCN format change,[16/] and the Commission staff has so held. 31 RR 2d 818. While the Guild obviously would like the Commission to believe that additional WNCN tapes exist which discuss the merits of WNCN's format change and which Starr is withholding, the Guild has not produced a scintilla of evidence to support this purely conjectural and false assertion. In any event, the Guild's speculation is directly contradicted by the sworn statement of Mr. Wachsmith that other than the 11 taped announcements heretofore referred to, no other tapes relating to the matter at issue were aired over WNCN. Wachsmith Affidavit, para. 7. Consequently, the Guild's argument on this point should be summarily rejected.

B. The Logging Of The Eleven Taped Announcements As Editorials By WNCN Personnel

Finally, the Guild urges that because the eleven (11) taped announcements referred to above were logged as "Editorials" by WNCN, this allegedly demonstrates that Starr's corporate management and WNCN personnel knew them to be corporate and

16 / While the Guild claims that the staff has not taken a "hard look" at all the transcripts submitted (App. For Rev., p. 7), the fact of the matter is that the staff did read all the transcripts submitted by both the Guild and Starr and so stated in its ruling. 31 RR 2d at 818.

station viewpoints on a controversial issue, and thus Starr was lacking in candor and good faith in representing to the Commission that the announcements in question did not present a controversial issue of public importance. Again, the Guild is guilty of making unfair and unsupported allegations.

As Mr. Wachsmith states, Ms. Sweeney, WNCN's former Traffic Manager, has informed Mr. Wachsmith that he instructed her to log the announcements in question as "Editorial", although Mr. Wachsmith does not recall the particular conversation. Nonetheless, Mr. Wachsmith assumes responsibility for making that decision, although he believes that, in retrospect, the appropriate logging entry for these announcements should have been "Other".[17/] Most importantly, however, no one from Starr's corporate management (including Mr. Buckley and Peter Starr) either directed, partook in, or was aware of Mr. Wachsmith's decision to log the announcements in question as "Editorials". The decision regarding the appropriate logging entry was made solely at the station level.

See Wachsmith Affidavit, pp. 4-5. The Guild's unsupported charges in this area must therefore be rejected.

IV.

Conclusion

17/ The station's program logs for the period in question have already been corrected.

No substantial question has been raised nor has any substantive showing been made by the Guild warranting Commission review of the staff's ruling herein that no action was warranted on the Guild's fairness complaint against WNCN. Accordingly, the Guild's Application For Review should be denied.

Respectfully submitted

STARR WNCN, INC.

Peter Shuebruk

Fly, Shuebruk, Blume and Gaguine
45 Rockefeller Plaza
New York, New York 10020

Benito Gaguine

Howard J. Braun

Fly, Shuebruk, Blume and Gaguine
1211 Connecticut Avenue, N. W.
Washington, D. C. 20036

Its Attorneys

December 23, 1974

A 250

AFFIDAVIT OF LARRY MILLER

I, Larry Miller, do hereby state on oath as follows:

1. I am Program Director of WQIV-FM (formerly WNCN-FM)

2. I have read the affidavit of Allan J. Eisenberg dated today relating to my discussions with him and with William F. Buckley, Jr. on November 6 and 7, 1974 concerning the suspension of the airing of the tape by Ms. Kristin Booth Glen over WNCN.

3. I have personal knowledge that the statements contained in Mr. Eisenberg's affidavit concerning my discussions with him and with William F. Buckley, Jr. on November 6 and 7, 1974 are true and correct.

4. I left the premises of WNCN at approximately 1:25 A.M. on November 7, 1974.

State of N.Y.
Co. of N.Y.

Larry Miller

Subscribed and sworn to before me
this 13 day of December, 1974

Ruth Grimm Trees
Notary Public

My Commission expires:

RUTH GRIMM TREES
Notary Public, State of New York
No. 31-4501089
Qualified in New York County
Commission Expires March 30, 1975

AFFIDAVIT OF ALLAN J. EISENBERG

I, Allan J. Eisenberg, do hereby state, on oath as follows:

1. I am a Vice President of Starr Broadcasting Group, Inc. and General Manager of WQIV-FM (formerly WNCN-FM). I assumed my duties as General Manager of WNCN on September 16, 1974. Prior thereto I was General Manager of Starr's Station, KUDL-AM-FM, Kansas City, Kansas.

2. From the day I assumed the General Manager's position at WNCN, I attempted to keep WNCN's audience continually apprised of newsworthy and significant developments regarding the endeavors of the "Save WNCN" Committee and the ensuing litigation between WNCN and the WNCN Listeners Guild, relating to the classical music format change. Counsel for Starr has previously filed with the Commission by letters dated October 3 and 10, 1974 copies of news reports and other announcements aired over WNCN on September 28, October 1 and October 2, 1974 relating to the WNCN format change and of the Guild's litigation concerning same before the Commission and the Court of Appeals.

3. Moreover, within the framework of WNCN's hourly newscasts during September 16-November 7, 1974 we periodically kept WNCN's audience apprised of new and significant developments relating to the Guild's litigation. Numerous on the air announcements also were made by station personnel during the period in question to apprise WNCN's audience of the efforts of the "Save WNCN" Committee and the Guild's litigation with WNCN.

A.J.E.

4. Since I was personally in charge of the WNCN news operation from September 16-November 1, 1974 (a permanent News Director was appointed on the latter date) and maintain daily contact with WNCN's News Director, I believe that significant and newsworthy developments regarding the Guild's controversy with WNCN were aired during WNCN's hourly newscasts right up to the day the format change was effectuated (November 7). I personally instructed the WNCN staff not to make any on the air announcements concerning the Guild's activities or litigation without first verifying same with me, so that I could be assured that such announcements were accurate, complete and not subject to misinterpretation by WNCN's audience.

5. I believe that WNCN's overall coverage of the Guild's activities and litigation with WNCN has been accurate and balanced. From September 16-October 5, 1974, WNCN, in its hourly newscasts, periodically kept its audience informed of the newsworthy activities and endeavors of the "Save WNCN" Committee and the Guild's litigation with WNCN.

6. From October 5 to November 7, 1974, however, WNCN deemphasized news coverage of the "Save WNCN" Committee since it already had reached its pledge goal, and gave greater hourly newscast emphasis to the Guild's activities and litigation with WNCN, since the Guild had obtained a preliminary stay from the Court of Appeals on October 5, 1974. WNCN's announcers also mentioned the Guild's activities and

litigation with WNCN more frequently during this period than A.J.E. previously on their respective programs. Such announcements, however, were consistent with Station guidelines in this area. See para. 4 above. A.J.E.

7. I would be remiss if I did not state that since the vast majority of the WNCN staff had strong, pro-Guild sentiments about the format change, I believed that a higher degree of licensee control and supervision of the staff was necessary than would normally be the case. Accordingly, I convened two formal meetings at the WNCN studio with WNCN staff members and the local AFRTA Union Secretary, Irv Lewis, to impress upon the staff the necessity for making sure that any announcements aired over WNCN concerning the Guild's litigation or activities be accurate and authorized by me. One A.J.E. of these meetings was held in late September and the other in late October.

8. When a problem came to my attention resulting from the failure of the staff to follow my directives, I took prompt, effective and remedial action. In one instance an announcer (Bill Watson) was fired by me for making improper and derogatory remarks about the Guild and Starr Broadcasting Group, Inc. A.J.E. In another instance, I reprimanded an announcer for airing a news item concerning the Guild's activities which item had not first been verified by me.

9. Although WNCN was under no legal obligation to do so, it voluntarily has provided free air time to Ms. Kristin Booth Glen, General Counsel to the Guild, to present the

Guild's views on the format change. At 12:59 P.M. on November 6, 1974 -- the day before the format change -- WNCN began broadcasting a statement by Richard Clurman, Chairman of the "Save WNCN" Committee, about the Committee's attempts to place the classical music format on another channel. This statement was broadcast hourly, and ran until 9:05 A.M. on November 7, 1974.

10. After hearing the broadcast of Mr. Clurman's statements, Ms. Glen called me during the afternoon of November 6 and requested that WNCN afford her time to present a statement on behalf of the Guild. Although I did not believe that WNCN was under any "Fairness" obligation to air the Guild's views, I nevertheless requested Ms. Glen to submit a written statement for my consideration. After reviewing that statement (See Ex. A attached hereto) I read it to Peter Starr A.J.C and then A.J.C, gave instructions to the WNCN staff to air said statement which was aired at no cost to the Guild.

11. Ms. Glen's statement was broadcast on November 6, 1974 at the following times:

6:27 P.M.
7:22 P.M.
8:30 P.M.
9:42 P.M.
10:17 P.M.

This time period (6 P.M. - 11 P.M.) constituted "prime time" for WNCN and was the period in which its highest spot rates

were sold.

12. Ms. Glen's statement also was aired at 9:30 A.M. on November 7, 1974.

13. To the best of my recollection and belief, I did not promise Ms. Glen that I would air her statement on an hourly basis. Instead, I promised her that I would endeavor to broadcast her statement frequently. A.J.E. Although Ms. Glen's statement was scheduled to be aired on WNCN approximately each hour during the late night and early morning hours of November 6 and 7, those spots were cancelled as a result of the following related events. A.J.E.

14. Sometime after 11 P.M. on November 6, Mr. Buckley called Larry Miller at the Station to ascertain whether Peter Starr was on the premises. Mr. Miller informed Mr. Buckley that Mr. Starr was not in and Mr. Buckley then asked Mr. Miller whether Peter Starr had approved the text of Ms. Glen's statement A.J.E. Mr. Miller replied that he did not know whether Mr. Starr had approved Ms. Glen's statement. Mr. Buckley asked Mr. Miller to contact me at home and, in the interim, instructed Mr. Miller to discontinue the broadcast of Ms. Glen's statement until he, Mr. Miller, received further instructions. A.J.E.

15. Mr. Miller immediately called me at home and apprised me of his conversation with Mr. Buckley, who I then called. Mr. Buckley said that his call to Mr. Miller was

prompted by remarks he had heard from a guest at a function which both he and the guest had attended the night of November 6. Said guest had informed Mr. Buckley that he (guest) had heard certain inflammatory and possibly libellous statements being broadcast over WNCN by Ms. Glen. Thus, Mr. Buckley was most anxious to reach Peter Starr to discuss this matter. I informed Mr. Buckley that Mr. Starr was airborne on his way to New York.

16. I further informed Mr. Buckley that Ms. Glen's statement had been approved by Peter Starr and counsel, and Mr. Buckley told me that he was not aware of this fact. Mr. Buckley said he would try to reach Peter Starr A.J.E. to discuss this matter, and A.J.E.

that as soon as he was able to reach Mr. Starr, he would probably call me back. A.J.E.

17. After I concluded my conversation with Mr. Buckley, I called Mr. Miller at the station at approximately 12:30 A.M. November 7. Mr. Miller asked if he should reinstate the scheduling of Ms. Glen's statements, and I told him that I did not discuss that matter with Mr. Buckley and thus he should adhere to Mr. Buckley's prior instructions.

18. At about 9 A.M. on November 7, Peter Starr called to instruct me to reinstate the airing of Ms. Glen's statement, which was done at 9:30 A.M. Since the WNCN format change and call letter change was to go into effect at 11 A.M. that

morning, preceded by an hour of uninterrupted classical music (Mozart), this was the most feasible time to air Ms. Glen's statement.

19. Mr. Starr also told me that he had spoken to Mr. Buckley in the early morning hours of November 7th. Mr. Starr said that Mr. Buckley was very concerned over the content of Ms. Glen's tape in view of what Mr. Buckley had heard concerning A.J.C. same, and wanted to be sure that Mr. Starr was aware of and had approved the exact content of same. When Mr. Starr assured Mr. Buckley that he did not consider the tape objectionable, Mr. Buckley voiced no objection to reinstating the airing of Ms. Glen's tape. A.J.E.

20. After my conversation with Mr. Starr, I called Ms. Glen and told her that her statement would be broadcast one final time.

State of NY
County of NY.

Allan J. Eisenberg

Allan J. Eisenberg

Sworn to and subscribed to
before me this 13 day of Dec.
December, 1974

Ruth Grimm Trees
Notary Public

My Commission expires:

RUTH GRIMM TREES
Notary Public, State of New York
No. 31-4501089
Qualified in New York County
Commission Expires March 30, 1976

A 258

Ex A

PROPOSED CONTRASTING VIEWPOINT ON
FUTURE OF WNCN FORMAT PRESENTED BY
WNCN LISTENERS GUILD

This is Kristin Booth Glen, General Counsel to WNCN Listeners Guild, reading this statement prepared by the Listeners Guild:

Today you have heard from Mr. Richard Clurman about his committee's efforts to save the WNCN format by transferring it to another frequency. These efforts have, unfortunately, been unsuccessful.

The WNCN Listeners Guild believes there is another way to save the classical format. That way is a lawsuit at the Federal Communications Commission and, if necessary, in the courts. The lawsuit would compel Starr Broadcasting Group, owners of WNCN, to continue the classical format as they stated they would in their application to the Federal Communications Commission when they bought the station in 1973.

Under the Federal Communications Act the airwaves belong to the people and the Federal Communications Commission is charged with allocating them in the public's best interest. Recent court decisions have required that the interest of a significant minority of classical music listeners must be considered by the Commission and that format changes may be stopped if retention of the classical format is in the public interest.

The WNCN Listeners Guild presently has such a case pending before the Federal Communications Commission raising the issue of whether the format change is in the public interest and whether Starr should continue as the licensee of this frequency. Both the Commission and the United States Court of Appeals, which gave us a temporary stay, have characterized our allegations as extremely serious. While the stay is no longer in effect for procedural reasons, there has as yet been no decision on the merits of the case itself. Although it will take time to get a decision, we are confident that we will ultimately prevail and return the format to WNCN through these legal efforts. In the meantime, we need your names, your interest and your support. You can contact the WNCN Listeners Guild by mail at 663 Fifth Avenue, New York, N.Y. 10022, or you can call us at 675 8630.

AFFIDAVIT OF PAUL WACHSMITH

I, Paul Wachsmith, do hereby state, on oath, as follows:

1. I was in general charge of and am familiar with the announcements (statements, continuity or so-called "editorials") aired over WNCN during August/September 1974 relating to the proposed cessation of the station's classical music format and the campaign to secure pledges to support such a format over another (non-commercial) station.

2. Attached hereto is a true and correct copy of each of the 11 announcements relating to the above subject matter which were taped by Mr. William F. Buckley, Jr., Ms. Elise Topaz and Mr. David Dubal for presentation over WNCN during the period commencing August 28, 1974 and ending September 15, 1974.

3. Exhibits 1-9 are the same nine (9) announcements which were attached to Peter Starr's September 27, 1974 letter to Mr. Mullins in answer to the "Fairness" complaint by the WNCN Listeners Guild.

4. Exhibits A and B are a true and correct copy of a reconstruction of the remaining two taped announcements which were accidentally erased. These announcements originally were prepared and aired by Ms. Topaz and Mr. Dubal. At my request, Ms. Topaz (Ex. A) and Mr. Dubal (Ex. B) have each prepared to

the best of her(his) recollection and belief the attached reconstruction thereof.

5. Besides the eleven (11) taped announcements, there were ad lib announcements by WNCN announcers at frequent intervals during the period in question. The basic thrust of these announcements was that:

> WNCN is going to stop broadcasting classical music October 5...We want volunteers to answer phones...The "Save WNCN" campaign is going well...We need your pledge to help preserve classical music on a non-commercial station...Call_____.

No scripts are available of these announcements, nor do I have any knowledge how many of these announcements were broadcast.

6. The eleven (11) taped announcements (Ex. 1-9 and A and B) attached hereto were aired between 9 and 16 times each day from August 28-September 16, 1974 for a total of approximaterly 270 times. A day by day breakdown of the dates and times when these announcements were aired is available if the Commission desires same.

7. To the best of my knowledge and belief, no other announcements dealing with the subject matter of those attached hereto -- other than the ad libs referred to in paragraph 5 above -- were aired on WNCN during August/ September 1974, or at any other time.

8. Since I was General Manager of WNCN up to September 16, 1974, I personally and repeatedly instructed

Ms. Topaz, Mr. Dubal and the other WNCN announcers during the period in question to refrain from making any on the air comments or engaging in any discussions relating to the merits of WNCN's musical format change. My instructions to the WNCN staff were that any on the air comments concerning this matter should be strictly limited to keeping the audience apprised of the "Save WNCN" Committee, the amount of money being raised by said Committee, the telephone number and address of said Committee, and telling listeners not to call WNCN with their pledges, but rather to call such pledges into the "Save WNCN" Committee. I know of no instance during my tenure as WNCN's General Manager where my instructions to WNCN's staff on this subject matter were violated.

9. The Commission's investigatory staff took 12 tape cartridges, which were returned to Starr's counsel by the Commission staff on December 10, 1974. I listened to all these tapes on December 11, 1974 at the WNCN studio.

10. Six (6) of these cartridges contain announcements (with minor word variations) identical to those submitted to the Commission in Peter Starr's September 27, 1974 letter regarding the Guild's "Fairness" complaint and attached hereto. (See, e.g., Ex. 1,2,3,4,7 and 8).

11. Four (4) of the tapes returned to our counsel by

the Commission staff were erased, so I have no knowledge of what such tapes contained much less whether the erasure occurred prior or subsequent to the acquisition of them by the Commission investigators.

12. The remaining two (2) tapes returned to counsel, each containing an announcement by Ms. Topaz and Mr. Dubal, presumably were recordings of ad lib announcements made by them similar to the other tapes referred to in paragraph 10 above, and I have no knowledge whether or not such announcements were ever actually broadcast on WNCN.

13. In any event, the eight (8) tapes which are audible relate solely to the proposed cessation of the WNCN classical format and the "Save WNCN" Committee's endeavors. None of them in any way discuss or comment upon the merits of WNCN's format change.

14. The circumstances under which the eleven (11) taped announcements referred to in paragraph 2 above were logged as "Editorials" during the period August 28-September 15, 1974 is as follows. Ms. Pat Sweeney, WNCN's former Traffic Manager, was in charge of making such logging entries. Ms. Sweeney has informed me that in a conversation with her, I instructed her to log these announcements as "Editorials". Although I do not recall this conversation,

as Station Manager at the time in question, I must accept full responsibility for making said decision. No one from Starr corporate management (including William F. Buckley, Jr. or Peter Starr) either directed, partook in, or was aware of the decision to log these announcements as "Editorials". The decision regarding the logging entries was made solely at the station level by Ms. Sweeney and myself as was normal practice.

15. In retrospect, I believe, that under the Commission's logging definitions, the appropriate entry for these announcements should have been "Other" programming. Accordingly, the program logs for WNCN for the period August 28-September 15, 1974 were corrected in the proper fashion to reflect same.

State of NY.
Co. of NY.

Paul Wachsmith

Subscribed and sworn to before me
this 13 day of December, 1974

Notary Public

My Commission Expires:

RUTH GRIMM TREES
Notary Public, State of New York
No. 31-4501099
Qualified in New York County
Commission Expires March 30, 1975

Ex 1
A 265

The following is Taped Announcement No. 2 by William F. Buckley, Jr. broadcast on WNCN beginning Tuesday, September 3, 1974:

"This is William F. Buckley, Jr., Chairman of the Board of Starr Broadcasting Group. The response to the 'SAVE WNCN' drive has been electric. If you continue to send in your pledges at the current rate, we'll be over the top by the 15th of September, and the result will be a continuation of the music in the unique blend you've become accustomed to, with this difference: The new WNCN would not carry commercial advertising. The music director, David Dubal, has said that if the drive succeeds, the new WNCN will be the finest music station in the world. My own opinion is that it's that already. Please make out your pledge now. Write to: SAVE WNCN, 2 West 45th Street, New York. The zip code, 10036. Thank you."

WNCN
104.3

A 266

(Ex 2

A Starr Group Station

2 West 45th Street New York NY 10036 212/867 6171

AUG. 29, 1974

THIS IS ELISE TOPAZ, A MEMBER OF THE STAFF OF WNCN. WE ARE VERY SAD ABOUT THE IMPENDING FORMAT CHANGE. BEGINNING OCTOBER 5, 1974, WNCN WILL NO LONGER OFFER THE MUSIC TO WHICH WE HAVE BECOME ACCUSTOMED. WITHOUT THE 24 HOUR-A-DAY BROADCAST, IT IS OBVIOUS THAT THE MUSICAL LIFE OF NEW YORK CITY WILL SUFFER A SERIOUS LOSS. WILLIAM F. BUCKLEY, JR., CHAIRMAN OF THE BOARD OF STARR BROADCASTING GROUP, AND INDEED AN APPRECIATIVE LISTENER OF THE STATION, HAS BROADCAST A TAPED STATEMENT SEVERAL TIMES OVER THE LAST FEW DAYS, WHICH GIVES US HOPE THAT WNCN'S SURVIVAL IS STILL POSSIBLE. IN HIS STATEMENT, HE MENTIONS A NEW STATION. THIS NEW STATION WOULD BE NON-COMMERCIAL, AND IN ORDER FOR THIS POSSIBILITY TO EXIST, WE MUST HAVE AN EXPRESSION OF GIGANTIC SUPPORT FROM YOU - OUR AUDIENCE. WE URGE YOU TO WRITE TO "SAVE WNCN," 2 WEST 45TH ST., N.Y., 10036 AND PLEDGE WHAT YOU WOULD BE WILLING TO DONATE ON AN ANNUAL BASIS. PLEASE SEND YOUR LETTERS AS SOON AS POSSIBLE. WE BESEECH YOUR SUPPORT. THAT'S "SAVE WNCN,"....

WNCN
104.3 FM

A Starr Group Station

Ex 3
A 267

2 West 45th Street New York NY 10036 212/867 6171

SEPT. 8, 1974

THIS IS WILLIAM F. BUCKLEY, JR., CHAIRMAN OF THE BOARD OF STARR BROADCASTING. YOUR INITIAL RESPONSE TO THE DRIVE TO SAVE STATION WNCN HAS MADE US ALL HUGELY OPTIMISTIC THAT NEW YORK'S FINEST FINE MUSIC STATION WILL CONTINUE TO SERVE THE COMMUNITY. THE GOOD NEWS RIGHT NOW IS THAT A FOUNDATION HAS OFFERED TO MATCH UP TO $100,000.00 ANY PLEDGE RECEIVED FROM TODAY UNTIL THE END THE DRIVE. WITH THIS GRANT AND ANOTHER $100,000.00 FROM YOU WILL HAVE MADE IT. WE PROMISE TO KEEP YOU POSTED. MEANWHILE, PLEASE SEND IN YOUR PLEDGE. TELL HOW MUCH YOU WOULD BE WILLING TO GIVE ANNUALLY - YES, IT WILL BE TAX DEDUCTABLE - TO KEEP WNCN ALIVE. SEND YOUR PLEDGE TO "SAVE WNCN," 2 WEST 45th STREET, N.Y. 10036. THANK YOU.

America's Foremost Fine Arts Station

WNCN
104.3 FM
A 268
A Starr Group Station

2 West 45th Street New York NY 10036 212/867 6171

Ex 4

SEPT. 8, 1974

THIS IS DAVID DUBAL, PROGRAM DIRECTOR OF WNCN. THE CAMPAIGN LAUNCHED TO SAVE OUR UNIQUE CLASSICAL FORMAT IS GOING EXTREMELY WELL. HOWEVER, WE NEED PLEDGES FROM ONE AND ALL. OUR MANY FINE VOLUNTEERS ARE STANDING BY WAITING FOR YOUR PLEDGE. WE NEED TO GO OVER THE TOP SOON: SPEED IS OF THE ESSENCE. THIS MUST BE OUR BIG WEEKEND. THE NUMBER TO CALL IS 242-2200, 242-2200. THANK YOU.

Ex 5

A 269

WNCN
104.3 FM

A Starr Group Station

2 West 45th Street New York NY 10036 212/957 6171

SEPT. 9, 1974

THIS IS ELISE TOPAZ FOR "SAVE WNCN." THE MUSICAL PROGRAMMING YOU ARE LISTENING TO RIGHT NOW IS AVAILABLE ONLY ON WNCN. THINK ABOUT THAT. THERE IS NO OTHER STATION IN THE UNITED STATES THAT OFFERS THE DEPTH OF PROGRAMMING THAT WNCN BRINGS YOU EVERY DAY, 24 HOURS-A-DAY. IN THE LAST WEEK, 300 PEOPLE HAVE TAKEN 16,000 PLEDGES TO PRESERVE FINE MUSIC IN NEW YORK CITY. THAT'S 16,000 OUT OF AN AUDIENCE OF 400,000. IF YOU ARE LISTENING TO THIS ANNOUNCEMENT AND YOU HAVE NOT CALLED IN YOUR PLEDGE, ALL WE CAN SAY IS, WE NEED YOUR HELP. THERE ARE NO MORE SPONSORS TO PAY OUR WAY; FROM NOW ON IT'S JUST YOU AND US AND THE MUSIC. PLEASE CALL NOW: 212-242-2200 OR WRITE "SAVE WNCN," 2 WEST 45TH STREET, N.Y. 10036. THE PHONE NUMBER AGAIN IS 242-2200. THANK YOU.

America's Foremost Fine Arts Station

A 270

WNCN
104.3 FM

A Starr Group Station

Ex 6

2 West 45th Street New York NY 10036 212/867 6171

SEPT. 15, 1974

LADIES AND GENTLEMEN, THIS IS WILLIAM F. BUCKLEY, JR., CHAIRMAN OF THE BORAD OF STARR BROADCASTING GROUP. I'M HAPPY TO REPORT THAT THE "SAVE WNCN" APPEAL HAS REACHED ITS GOAL. WE HAVE IN HAND PLEDGES TO SUPPORT THE CONTINUATION OF THE PRESENT FORMAT AMOUNTING TO $500,000.00. ADDITIONALLY, WE HAVE A GRANT OF $100,000.00 THAT CAN BE APPLIED TO THE CAPITAL EXPENSE OF CONVERTING THE NEW CHANNEL FOR USE IN THE WNCN FORMAT. THREE NEW YORK CITY STATIONS HAVE SHOWN AN INTEREST IN ADOPTING THE WNCN FORMAT. EACH OF THEM HAS A DIFFICULTY OF ONE KIND OR ANOTHER. I AM CONFIDENT THAT ONE OF THESE STATIONS WILL IN THE NEXT TWO WEEKS STEP FORWARD TO PERPETUATE THE FORMAT WE ALL REVERE. REMEMBER, IT IS SPECIFIED THAT THE NEW FORMAT WILL EXCLUDE ALL COMMERCIAL MESSAGES.

I HAVE INVITED A COMMITTEE OF NEW YORKERS TO TAKE CHARGE FROM THIS POINT ON. THEY ARE RICHARD CLURMAN, PRESIDENT OF THE CITY CENTER; SCHUYLER CHAPIN, GENERAL MANAGER OF THE METROPOLITAN OPERA; DR. FRANK STANTON, PRESIDENT OF THE AMERICAN RED CROSS, AND FORMER PRESIDENT OF CBS; DAVID OPPENHEIM, DEAN OF NEW YORK UNIVERSITY AND FORMER MUSIC CONSULTANT FOR RCA; DIXON PALMER, REPRESENTING THE MERLIN FOUNDATION; AND THEODORE SORENSEN, THE DISTINGUISHED ATTORNEY. ALL OF THESE GENTLEMEN HAVE AGREED TO SERVE. THIS COMMITTEE WILL PRESIDE OVER THE NEGOTIATIONS. IT WILL MEET FOR THE FIRST TIME ON TUESDAY, SEPT. 17. AS THE NEWS DEVELOPS, IT WILL BE PASSED ALONG TO YOU BY THE CHAIRMAN OF THE COMMITTEE, WHO WILL BE ELECTED AT THE FIRST MEETING. MEANWHILE, I JOIN WITH THE STAFF OF WNCN IN CONGRATULATING YOU ON WHAT YOU HAVE DONE. THANK YOU.

104.3 FM

A Starr Group Station

2 West 45th Street New York NY 10036 212/867 6171

(Ex 7

A 271

SEPT. 18, 1974

THIS IS ELISE TOPAZ WITH THE LATEST REPORT ON THE SAVE WNCN CAMPAIGN. ON SEPT. 17, THE COMMITTEE TO SAVE WNCN MET FOR THE FIRST TIME. RICHARD CLURMAN, PRESIDENT OF CITY CENTER, WAS ELECTED AS ACTING COMMITTEE CHAIRMAN. THE PROCEDURE FOR THE TRANSFERENCE OF THE WNCN ASSETS TO ANOTHER STATION WERE DISCUSSED. AS FAR AS THE NEGOTIATIONS WITH STATIONS WBAI, WNYC, AND WFUV ARE CONCERNED, THERE HAVE BEEN NO FORMAL PROPOSALS TO THIS DATE. WE WILL KEEP YOU INFORMED AS TO FUTURE DETAILS. THE MEMBERS OF THE COMMITTEE TO SAVE WNCN ARE RICHARD CLURMAN, SCHUYLER CHAPIN, DR. FRANK STATNTON, DAVID OPPENHEIM, THEODORE SORENSEN, DIXON PALMER, ROSALYN TURECK, AND WILLIAM F. BUCKLEY, JR.

WNCN

A 272 A Starr Group Station

Exhibit 15
Page 7

EX 15

2 W. 45th St. / New York NY 10036 212/757-8917

SEPT. 8, 1974

THIS IS WILLIAM F. BUCKLEY, JR., THE CHAIRMAN OF THE BOARD OF STARR BROADCASTING. AS YOU KNOW, $100,000.00 HAS BEEN PLEDGED BY A FOUNDATION PROVIDED WE CAN MATCH IT WITH FRESH PLEDGES. WE ARE BEGINNING NEGOTIATIONS TO KEEP WNCN ALIVE, 24 HOURS OF THE MUSIC YOU HAVE BECOME USED TO, ONLY THIS TIME WITHOUT COMMERCIAL INTERRUPTION OF ANY KIND. SO, PLEASE REMEMBER, YOUR PLEDGE HAS DOUBLE THE VALUE FOR THE NEXT $100,000.00. PLEASE WRITE TO "SAVE WNCN," 2 WEST 45TH ST., N.Y., 10036, OR TELEPHONE 242-2200. THERE ARE 10 VOLUNTEERS STANDING BY TO TAKE YOUR CALL. THAT's 242-2200.

WNCN
104.3 FM

A Starr Group Station

2 West 45th Street New York NY 10036 212/867 6171

EX 9
A 273

PRESS RELEASE

The following is a transcript of the radio announcement by William F. Buckley, Jr. regarding the change of format of WNCN:

" This is William F. Buckley, Jr. I am the Chairman of the Board of the Starr Broadcasting Group. You will have heard that Station WNCN will no longer broadcast in the format to which we are accustomed, beginning on October 5th.

Between now and then we hope to conclude arrangements that would permit the continuation of the WNCN format, together with its musical director and its announcers, on another channel. That channel would not carry commercial announcements of any sort. We are, at this point, discussing with several New York channels the possibility of turning over our extraordinary collection of records, which we value second only to the unique staff that has made WNCN possible.

What we need from you is an expression of interest, concretely. Would you be willing to make an annual contribution to a non-commercial station that would perform for you what WNCN is now performing. Conceivably, we could even arrange to transfer the call letters,to which we are all accustomed, on over to the new channel.

The officers of Starr and representatives of other stations will begin their meetings on Thursday, September the Fifth. If we can have from you an expression of your support by then, that would help.

Write to "SAVE WNCN"; mention the amount of money you would be willing to dona if and when the arrangements go through.....yes, it would be tax deductable. And send your letter to: WNCN, 2 West 45th Street, New York, New York.

Thank you."

A 274 WNCN 104.3 FM

A Starr Group Station

'Ex A

2 West 45th Street New York NY 10036 212/867 6171

SEPT. 9, 1974

THIS IS ELISE TOPAZ FOR "SAVE WNCN." WE ARE DEEPLY TOUCHED BY YOUR OVERWHELMING RESPONSE TO THE "SAVE WNCN" CAMPAIGN. WE ARE HAPPY TO REPORT THAT WE HAVE REACHED OUR GOAL OF $500,000.00, AND YOU HAVE PROVEN THAT A NON-COMMERCIAL RADIO STATION WOULD BE POSSIBLE. WE ARE THANKFUL TO ALL OF YOU WHO PLEDGED AND TO THE MANY VOLUNTEERS WHO HAVE DEVOTED THEIR TIME AND ENERGY TO HELP KEEP WNCN ALIVE.

WNCN
104.3 FM

A Starr Group Station

2 West 45th Street New York NY 10036 212/867 6171

EX B 275

B

SEPT. 9, 1974

THIS IS DAVID DUBAL, PROGRAM DIRECTOR OF WNCN. WITHIN A TEN-DAY PERIOD, WE HAVE REACHED OUR GOAL OF HALF A MILLION DOLLARS. IT WILL NOW PERHAPS BE POSSIBLE TC CONTINUE OUR UNIQUE 24-HOUR A DAY FORMAT AS A NON-COMMERCIAL STATION. I WANT TO THANK THE 20,000 PEOPLE WHO CALLED OR WROTE IN THEIR PLEDGES AND ALSO TO THANK OUR MANY VOLUNTEERS WHO, UNDER THE DEDICATED EFFORTS OF ELISE TOPAZ, WORKED TO MAKE THIS POSSIBLE. LET US HOPE THAT WNCN'S MUSIC WILL CONTINUE TO FILL THE AIR WAVES. THANK YOU.

A 276

CERTIFICATE OF SERVICE

I, Helen R. Kidwell, do hereby certify this 23rd day of December, 1974, that I mailed a copy of the foregoing "Opposition Of Starr WNCN, Inc. To Application For Commission Review Of Fairness Complaint Decision", postage prepaid, or caused it to be personally served, to the following:

Charles M. Firestone, Esq.
Frank W. Lloyd, Esq.
Citizens Communications Center
1914 Sunderland Place, N. W.
Washington, D. C. 20036
Counsel for the Guild

Ms. Kristin Booth Glen
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New York, New York 10017
Counsel for the Guild

David M. Rice, Esq.
Room 3014
200 Park Avenue
New York, New York 10017
Counsel for Classical Radio for Connecticut

Samuel Frankel, Esq.
Room 720
60 East 42nd Street
New York, New York 10017
Counsel for Classical Radio for Connecticut

Helen R. Kidwell
Helen R. Kidwell

A 277

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re	)
	)
Petition for Revocation of License of	)
STARR BROADCASTING GROUP, INC.	)
to operate	)
Station WNCN-FM, New York, New York,	)
or	)
Immediate Submission of Renewal	)
Application	)
and	)
Resolution of Fairness Doctrine	)
Complaint and Other Relief	)

REPLY TO OPPOSITION TO APPLICATION
FOR COMMISSION REVIEW OF
FAIRNESS COMPLAINT DECISION

The WNCN Listeners' Guild hereby replies to the December 23, 1974 Opposition of Starr WNCN, Inc. (Starr) to its November 4, 1974 Application for Review of the Broadcast Bureau's October 3, 1974 ruling on the Guild's above-referenced petition as it related to Starr's violations of the Fairness Doctrine in its treatment of a controversial public issue in which it was directly financially involved--its own proposed change of format of WNCN-FM, and the means by which this format could be preserved.

I. INTRODUCTION

The Guild, in its November 22 Opposition to the

first of Starr's two motions for extension of time[1] recounted at length the factual context of the fairness claims as they have been consistently advanced by the Guild since its first telegram to Starr on September 10, 1974. The substance of these complaints have been repeated in several other documents, besides the Guild's September 23 Petition, the November 4 Application for Review, and November 22 Opposition, including its September 30 Reply to the September 27 Peter Starr letter, its October 21 Reply to Starr's overall Opposition to the Guild's Petition, and various stay motions and other supplemental filings before the Commission. The fairness issues have also been extensively briefed before the Court of Appeals in WNCN Listeners' Guild v. F.C.C., Nos. 74-1925, 74-1926. We will not repeat those arguments here, since they have been amply briefed for the Commission in these pleadings.

But despite the pains to which the Guild has gone to make its position clear in these filings, Starr continues to avoid or confuse the central issue of this case. In its December 23 Opposition, for example, Starr:

1. Buries in a footnote (p. 11) its response to the Guild's central point, supported by a consistent line of

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1/ The Guild's Opposition also contained a motion for expedited consideration of the fairness issues and all other matters raised by the September 23 Petition. This motion was not mentioned in the Broadcast Bureau's December 5 grant of Starr's first extension request, and has as yet been ruled upon by neither the Bureau nor the Commission.

Commission precedent, that a licensee has a particular duty to assure fairness doctrine compliance when it presents views on a controversial issue in which it has a direct, personal financial interest.

2. Incorrectly states the holding of the fundamental precedent cited by the Guild in that same footnote.

3. Confuses the standards of the Commission's recent Fairness Report for judging when a broadcaster must take affirmative steps to cover an issue at all (the first part of the fairness doctrine), with the standards for judging whether a licensee has made a reasonable judgment that an issue it has covered from one point of view is a controversial issue of public importance within the meaning of the doctrine's second obligation to provide for contrasting views (pp. 7-8).

4. Claims, despite a long string of court decisions, recently culminating in Citizens Committee to Save WEFM v. F.C.C., ____ F.2d ____ (D.C. Cir. No. 73-1057, Oct. 4, 1974), holding a format change to be a critical public interest issue (perhaps, according to WEFM, even requiring affirmative coverage) that, to the contrary, "format changes are a management decision

and committed solely to a licensee's discretion" that can never be a issue of sufficient controversiality and public importance to warrant imposition of fairness obligations. (p. 6).

5. Asserts, despite its admission that its taped editorial announcements alone aired 270 times between August 23 and September 16 (p. 18), and that it cannot estimate the number of ad lib comments on the format issue during this and later periods (p. 19), that it has met its fairness obligations by airing a brief message by a Guild spokesperson six times the night before and the day of WNCN's format change (November 6 and 7) (p. 14), while airing the Save WNCN Committee position over 20 times over the same two days. (Eisenberg Aff., p. 4).

6. Claims in a general affidavit by the new General Manager of WQIV that WNCN's news coverage and "announcements" by station staff between September 16 and November 7 were "accurate and balanced" (Eisenberg Aff., p. 2), when the only transcriptsions of such material submitted to the Commission (on October 3 and 10) show that the Guild's principal points (only finally heard by the WNCN audience in the far overdue message by Ms. Glen in the last 18 hours WNCN was on the air) were omitted or inadequately presented.

7. Asks the Commission to rely on this generalized affidavit, without other supporting tapes or transcripts, as to almost two months of allegedly balanced announcements about the pending WNCN litigation and Save WNCN Committee efforts (p. 13), yet asks the Commission to give no weight to the Guild's affidavit-supported transcriptions of specific WNCN announcements because no taped record exists of them. (pp. 17-20).

8. Claims that Starr's Board Chairman and the WNCN Program Manager, (who would normally be heard on air unless expressing the opinions of management) were not editorializing during these hundreds of taped announcements, since its Station Manager, who logged these as "Editorials" at the time, has now decided for unstated reasons to change those logs to read "Other" (and that, in any event, a station manager does not make "management" decisions). (p. 21).

We shall discuss these points in greater detail below.

II. SINCE 1958, THE COMMISSION HAS CONSISTENTLY HELD THAT A HIGHER STANDARD MUST BE APPLIED IN JUDGING A LICENSEE'S ACTIONS IN FAILING TO AIR CONTRASTING VIEWPOINTS ON ISSUES IN WHICH IT IS PERSONALLY AND FINANCIALLY INVOLVED.

The above-stated policy, while fully briefed by the Guild in its September 27 Reply on the fairness issues

involved in its Petition, was not addressed by the Bureau in its October 3 ruling. It remains both one of the principal grounds for the Guild's court appeal of that ruling and this application for review. Yet the licensee claims (1) that the 1965 case quoted from at length in the Guild's September 27 Reply does not stand for this proposition, and (2) that to its knowledge no other case has imposed such a standard (p. 11, n. 5). Starr is clearly in error on both counts.

The first case cited by the Guild applying this higher standard is WSOC Broadcasting Co., 17 R.R. 548 (1958). There the licensee had broadcast two programs and 43 spot announcements opposing subscription television, but had not presented views of persons favoring STV. This issue was currently the subject of Congressional hearings. Despite the fact that the station one month later had offered time to the three principal STV groups, the Commission held that it had nevertheless failed to make "any timely effort to secure the presentation of the other side of the issue by responsible representatives thereof." Id. at 550. (Emphasis added). In speaking of the licensee's fairness doctrine obligation, the Commission specifically held that: "That responsibility

assumes special significance with respect to issues which affect the licensee personally and financially." Id. at 549. (Emphasis added).

The next reported case directly in point (and the only one cited by the Guild that Starr even mentions) is Springfield Television Broadcasting Corp., 4 R.R. 2d 681 (1965). Here the context was a series of editorials by a television licensee against CATV generally and local CATV interests in particular. Starr cites only a portion of the Commission's opinion that notes that the licensee's had a right to editorialize on this subject, and the fact that it was personally involved in this controversy was "immaterial" to this issue, and this issue only. Id. at 684. But this is merely a prefatory point that the Guild has nowhere contested, and Starr ignores the central paragraph of this opinion, quoted at length by the Guild in its September 27 reply, ultimately holding that: "where a licensee has made a good faith judgment that it should present its viewpoing on a matter in which it is personally involved, the licensee has a particular duty to insure that the requirements of

fairness are satisfied. Id. at 685 (Emphasis added). The Commission went on to state:

> Springfield, however, far from making the special efforts to achieve fairness required in this case, has not shown that it made the minimum efforts required in the ordinary case. Ibid. (Emphasis added).

This language unambiguously imposes a higher showing of good faith and reasonableness upon the licensee, and a higher standard for the Commission in judging the acts of licensee discretion under the obligations of the fairness doctrine, in such cases. 1/

The final case on this point cited by the Guild in its September 27 reply was another case involving presentations by television licensee on CATV. In Pennsylvania Community Antenna Association, Inc., 6 R.R. 2d 112 (1965), the three licensees complained of had aired views inimical to CATV. Only one was held to have met the "particular duty" established by the above line of cases to insure the presentation of contrasting views. This station had attempted to arrange for a

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1/ Besides WSOC, Springfield also cites an unreported Letter to Emerson Stone, Jr. (FCC 64-363 (1964)) for the same proposition.

discussion program featuring the views of the four major local CATV applicants, had broadcast a daily 15 minute program of direct reading of letters from the public, many against its own position, on the CATV issue (on which it offered to read the position of the Pennsylvania CATV Association), and had broadcast an editorial response by one of the local cable applicants. The other two stations were held to have violated the higher standard of fairness obligations required of "a licensee which presents viewpoints on a matter in which it is personally involved. . . ." Id. at 116. All of the above-referenced cases were cited in this case.

This uniform principle has since been invoked in the denouement of the Springfield Television case. In 1971 Springfield had short-term license renewals imposed on it and was required to submit with its next renewal a "complete report on procedures instituted to achieve fairness when it editorializes on a controversial issue with which it is personally involved. . . . Springfield Television Broadcasting Corp., 21 R.R. 2d 327, 329 (1971). The Commission again reiterated that licensees presenting views on "matters of

personal concern" involving controversial public issues "should exercise extraordinary diligence to achieve fairness." Ibid. (Emphasis added).

This line of cases, involving presentation of views, whether in editorials or in other programming, on Subscription Television and CATV are directly in point in the instant case. They all involve presentation by a licensee of viewpoints on an issue directly affecting its own financial benefit from its broadcast interests.[1/] It should be noted that each of these decisions adopting and reiterating this higher standard are full Commission decisions, not Broadcast Bureau decisions under delegated authority. Thus it is entirely appropriate and necessary that the Commission in this case move to correct the Bureau's failure to address this point and render a decision in this case that is consistent with its own past precedents.

It would be less than candid of the Guild, however, if it did not bring to the Commission's attention the fact

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1/ In another line of cases, the Commission has expressed concern about disclosure in cases where the licensee's personal interests, or those of its employees, are non-broadcast ones that are not readily apparent to the viewer or listener. Cf. NBC, 14 F.C.C. 2d 713 (1968) (Chet Huntley commentaries on meat inspection); Gross Telecasting, 14 F.C.C. 2d 239 (1968) (nondisclosure in editorials of licensee interest in airport restaurant).

that one of its very recent rulings, In Re Complaint of Public Communication, Inc. (FCC 74-1367, December 20, 1974) may be cited as appearing to be in conflict with this established policy. This case dealt with a complaint that the three networks and five Los Angeles television licensees had not met their initial duty to raise and discuss the controversial public issue of pending broadcast license renewal legislation. The Commission first found no such duty under the general affirmative obligation component of the doctrine. It then went on to state that the fact that a licensee's own private financial interests were involved in this particular issue did not change the standard to be applied. (Slip Opinion, p. 7).

This ruling does appear in conflict with the Commission's past line of cases cited by the Guild. The opinion does not, however, either cite these cases nor distinguish them in any manner. If the Guild is correct, then the Commission has departed from its prior precedent without overtly recognizing this fact and adequately explaining its grounds for doing so. Greater Boston Television Corp. v. F.C.C., 444 F.2d 841, cert. denied

403 U.S. 923 (1971); Secretary of Agriculture v. United States, 347 U.S. 645, 653 (1954). The Commission merely states that such a different standard would not be desirable, apparently as if this were a de novo question.

Nevertheless, the Guild will allow the parties to that complaint to argue their own position. That case dealt with the standards to be applied to what the FCC called issues "so critical or of such great public importance that it would be unreasonable for the licensee to ignore them completely." Id. at 4. It is at least clear that the case presented by the Guild, where what is principally at issue is the licensee's consistent and extensive presentations of views on one side of a controversial public issue in which it was self-interested--not the question of its affirmative duty to raise this issue in the first place--is directly in point with prior Commission precedent imposing a higher standard in judging the good faith and reasonableness of the licensee's concurrent failure to present timely and adequate contrasting viewpoints. Here the Commission must squarely apply a line of decisions consistently applied for the last 18 years that is required by both law and sound administrative policy.

III. THE CONTROVERSIALITY AND PUBLIC IMPORTANCE OF THE ISSUE DISCUSSED OF THE WNCN FORMAT CHANGE CANNOT BE REASONABLY QUESTIONED.

We will readdress this point only briefly, and only because Starr baldly states that the public has no legitimate interest in format changes since they are committed "solely to a licensee's discretion" (Opp., p. 6). A long line of court decisions, beginning with Citizens Committee to Preserve the Voice of the Arts in Atlanta (WGKA-FM) v. F.C.C., 436 F.2d 263 (D.C. Cir. 1970), have held precisely the opposite. These decisions, culminating in the WEFM case, supra, clearly belie Starr's contention that these are not issues requiring fairness obligations to be followed when views on them are aired.

In fact, the WEFM court went further and intimated that the Commission might well reconsider whether format changes are so critically important to the particular portion of the community that relies on the station in question for its information that a licensee might have a per se affirmative duty to discuss the issue, even if it did not wish on its own to initiate such discussion. Slip Opinion at 13, n. 14.

Going a step further, Starr argues that even if some format changes could conceivably be of controversial

public importance, its judgment that this one was not should be upheld as reasonable. But it cites in support of this proposition sections of the Commission's Fairness Report, 39 Fed. Reg. 26372 (1974) that go to the determination whether an issue is so critical that the licensee must cover it ab initio. (See last sentence of Starr's ¶11, which is taken from ¶25 of the Fairness Report.) In the Public Communication Inc. case, supra, the Broadcast Bureau claimed that the complainant had mistakenly used criteria applicable to determining the public importance of views already aired to try to determine what issues must be affirmatively covered. PCI, p. 4, ¶9.[1/] Here Starr has in fact transposed Commission language in the reverse fashion.

The Fairness Report makes it clear that (a) media coverage, (b) attention of government officials and other community leaders, and (c) impact on community are the keystones by which the licensee's judgment is to be tested. The Guild, most recently in its November 22 Opposition and Motion, has shown the unprecedented media coverage, governmental and other

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1/ The Commission, however, corrected the Bureau on this point. Id., p. 6, ¶13.

leadership interest, and community impact of this issue. If there was ever a case where a licensee's determination that its format change and how to deal with it is not an issue of great public concern cannot be held to be reasonable, this is it. As the Guild has shown (e.g., attachment to November 22 Opposition and Motion) even other New York licensees (who in fact might stand to gain audience if WNCN were permanently silenced and the Guild unsuccessful in its efforts) have judged this to be a controversial issue of public importance. Given Starr's higher duty because of its self-interest in keeping alternative views such as that of the Guild off the air, its arguments as to good faith in judging this not to be a controversial issue cannot bear weight.

IV. THE BUREAU'S GROUNDS FOR DENIAL OF THE GUILD'S COMPLAINT WERE CLEARLY ERRONEOUS.

In any event, it is clear that the Bureau itself accepted the Guild's contentions as to the controversiality of the issue. Its ruling was based solely on a judgment that Starr was not unreasonable in determining that its many announcements presented no point of view on the format change controversy. The record of Starr's subsequent shallow attempts to give the appearance of presenting Guild views or "balanced"

information, to which it points at such great length in pages 10-16 of its Opposition, shows that it does not itself really believe this to be a supportable position. As will be shown below, this shows precisely what kinds of information was needed to counterbalance the Save WNCN drive, most explicitly as seen in Ms. Glen's final-hour address to the WNCN audience, well over two months after Starr began its own propagandizing on a course of action for WNCN listeners that was doomed to fail, and has failed.

Perhaps the key to this erroneous finding by the Bureau is its acceptance sub silentio of Starr's characterization of the "Save WNCN" campaign as "announcements" rather than "editorials". Yet the Guild submitted evidence that they were so logged at the direction of the station manager. (p. 21). It stretches credibility for Starr to argue that when its Board Chairman began taping messages to be aired over its facilities concerning one proposal for continuing its format that this even was not intended and understood that this was to represent a corporate position of Starr on the subject of how the public should deal with the proposed change. Certainly no disclaimer was ever issued. Nor was

the Program Manager's announcements a normal event. This was the type of presentation that is universally accepted as a management presentation of views. Starr has given no reasonable grounds whatsoever to justify its assertion that it did not believe it was airing a view on the format change issue. It merely cites its former manager's late and unexplained decision to relog these as "Other".

Ultimately, the question comes down to the proper standard to be applied to this determination by Starr. While we would argue that even under normal fairness obligations Starr could not reasonably have believed was not presenting viewpoints on a controversial issue and that it was adequately meeting its fairness obligations by stonewalling the Guild for almost two months up to the last day before the format changed, its personal financial interest should, under past precedent, as amply discussed above, have made it doubly sensitive to the issues that were in fact addressed in its "Save WNCN" campaign.

We are not claiming that Starr's determination was arbitrary and unreasonable merely because of its financial self-interest. We are stating that because all the other

tests of a controversial public issue were met by its format change to such an overwhelming degree, and Starr was airing hundreds of messages that undisputably addressed the question of format change in some manner, and Starr had a financial self-interest in the adoption by the public of the approach it was advocating, that this determination was arbitrary.

V. STARR HAS NOT PRESENTED ADEQUATE AND TIMELY CONTRASTING VIEWPOINTS ON THE ALTERNATIVES TO THE PROPOSED FORMAT CHANGE.

The Guild has, in its November 22 Opposition and Motion, discussed this issue at length (pp. 7-11). It is also addressed in the attached affidavit of Kristin Booth Glen.

The most effective way to rebut this contention is for the Commission to examine just what the Guild was able to present to the WNCN audience when it finally gained six short messages the last day of WNCN's existing format (Exhibit A to Eisenberg Aff.), with the so-called "balanced" information submitted in the October 3 and 10 filings of Starr.

This was the first time the WNCN audience was clearly told that the basic litigation at the FCC over Starr's change of format and qualifications to hold the

license was still continuing, and that the stay battle was just one skirmish in a long war. The misrepresentations of Starr in its transfer application had not clearly been addressed before. It was the first time the audience was clearly apprised of "another way" to save the format through legal action. Never were they previously told that both the FCC and the Court had agreed that the Guild's charges were extremely serious. Most had been led to believe that the Commission and Court action on the stay was the end of the road, in effect a decision on the merits.

Nothing in the Starr Opposition speaks to a redress of the 270 announcements aired before September 16, and only the bare affidavit of Eisenberg attests to supposedly "accurate and balanced" news coverage and announcements thereafter. Yet, as previously noted, Starr asks the Commission to give no weight to the Guild's transcriptions of non pre-taped WNCN announcements.

It is clear that Starr acted too little and too late. It aired the six messages by the Guild two days after this Application for Review was filed. The "sheer

weight" of the imbalance requires relief. Fairness Report, ¶44.

Respectfully submitted,

Kristin Booth Glen

Kristin Booth Glen
30 E. 42nd Street
New York, New York 10017

Frank W. Lloyd

Charles M. Firestone

Citizens Communications Center
1914 Sunderland Place, N.W.
Washington, D.C. 20036

Counsel for WNCN Listeners' Guild

January 6, 1975

Affidavit of Kristin

Booth Glen

forthcoming

A 298

CERTIFICATE OF SERVICE

I, Consuella Garnett, certify that I have this 6th day of January 1975, caused to be delivered via First Class Mail, a copy of the foregoing "Reply to Opposition to Application for Commission Review of Fairness Complaint Decision" to the following:

Howard Braun, Esq.
Fly, Shuebruk, Blume & Gaguine
1211 Connecticut Avenue
Washington, D.C. 20036
Counsel for Starr WNCN, Inc.

David Rice, Esq.
Room 3014
200 Park Avenue
New York, New York

Samuel Frankel, Esq.
Room 720
60 East 42nd Street
New York, New York 10017
Counsel for Classical Radio For Connecticut

Consuella Garnett

FOR RESPONSIVE MEDIA:
CITIZENS COMMUNICATIONS CENTER
1914 SUNDERLAND PL., N.W., WASHINGTON, D.C., 20036 (202) 296-4238

A 299

January 7, 1975

Vincent J. Mullins
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

In Re: Petition for Revocation of License of Starr Broadcasting Group, Inc. to operate Station WNCN-FM, New York, New York/ Fairness Doctrine Complaint-Application for Review

Dear Mr. Mullins:

Yesterday, January 6, 1975, the WNCN Listeners' Guild filed, through the undersigned Washington counsel, its reply to the December 23, 1974 Opposition of Starr WNCN, Inc. to the Guild's November 4, 1974 Application for Review of the Broadcast Bureau's October 3, 1974 ruling (8330-S/C9-1280) on certain fairness doctrine issues contained in the above-referenced petition.

An affidavit referred to as an attachment in the Guild's reply, executed in New York by Kristin Booth Glen, counsel for and an officer of the Guild, did not arrive in Washington until today. This affidavit is herewith submitted, along with the requisite number of copies, to the Commission. The Guild asks that it be associated with and attached to its January 6 Reply, and fully considered in connection therewith. Copies of the affidavit are being concurrently served upon counsel for the affected parties.

A 300

If there are any questions concerning the foregoing, please contact the undersigned.

Respectfully submitted,

Frank W. Lloyd

cc: Howard Braun, Esq.
David Rice, Esq.
Samuel Frankel, Esq.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re	)	
	)	
Petition for Revocation of License of STARR BROADCASTING GROUP, INC.	)	
	)	
to operate	)	
	)	
Station WNCN-FM, New York, New York	)	
	)	
or	)	AFFIDAVIT
	)	
Immediate submission of Renewal Application	)	
	)	
and	)	
	)	
Resolution of Fairness Doctrine Complaint and Other Relief	)	

State of New York)
County of New York) ss.:

KRISTIN BOOTH GLEN, being duly sworn, deposes and says:

I am the attorney for the WNCN Listeners' Guild and as such am fully familiar with all the prior proceedings herein. I make this affidavit in response to the "Opposition of Starr-WNCN, Inc. To Application for Commission Review of Fairness Complaint Decision" filed December 23, 1974.

That "Opposition" contains both misstatements of fact and misleading impressions of which the Commission should be aware in considering the Guild's application for review of its Staff's decision on our fairness complaint.

While the legal issues raised - rather irrelevantly - by Starr are dealt with in the Guild response, I will address myself to Starr's contention that,

> "Assuming Arguendo that the Announcements in Question Presented One Side of A Controversial Issue of Public Importance, Starr Has Fully Discharged Its Fairness Obligations" (Starr Op. p. 10, et seq.)

This simply is not the case. First, Starr suggests that from September 16 (after Mr. Eisenberg apparently took charge) to November 7 (the day the format changed),

> "WNCN's audience was continually informed of significant and substantial developments regarding the efforts of the 'Save WNCN' Committee and the ensuing litigation between the Guild and WNCN" (Starr Op. p. 13)

Unfortunately, Starr has submitted no exhibits involving transcripts of the "hourly newscasts" by which this 'continuous information' occurred. It is my recollection and the recollection of other officers and members of the Guild that no such "continuous" information was broadcast over the stated period. The first mention of the Guild's litigation that we recall was on the date on which the Court of Appeals granted us our stay. The message then recorded by Mr. Eisenberg, and subsequently written out for the announcers, involved misstatements of face (i.e., that the stay was granted by the 'District Court') and misimpressions (that lawyers for both sides would appear in Court the following Thursday, when in fact that date was set for the submission of briefs).

Subsequent "news reports" - during the time under which Starr was subject to Court scrutiny - made some mention of Guild litigation, but never presented the opposing side of the controversial issue raised - i.e., that the public interest, as defined by the courts,* might require the retention of a classical format on WNCN and that the Commission could so order; instead, Starr continued the clear impression, stated in the tapes submitted by both sides, that the format change was a fait accompli and that only a new, listener sponsored station could repair it.

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The strength of this impression, fostered by virtually all of the information made available to its public by the licensee, cannot be overestimated. To this date, on a daily basis the Guild receives calls from persons who listened to the station during its last few days and who are astounded that even now there has been no ruling whatsoever on the merits of Guild's petition. The number of such calls at the time of the format change, and the

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The depth of this misinformation can best be described by a phone call I received from a New York Times reporter shortly before the change asking for my comments "now that it was all over."

Although Starr's so-called news reports of the litigation totally failed to apprise listeners of the actual situation, it claims to have cured all prior prejudice by the broadcast of my tape on November 6 and 7. This conclusion omits a significant fact.

My tape was composed and broadcast in response to an entirely one-sided, self-serving and rather confusing tape by Richard Clurman which was then being aired on an hourly basis - presumably as the last information WNCN listeners would ever hear.* Again, there was only a single viewpoint - that the format change was a final fait accompli and that some, albeit now vague and distant, other channel was the only solution to the problem. No mention was made by the Guild, the FCC, or the obviously pending litigation. Instead, interested listeners were invited to send their names to Starr's address so that Mr. Clurman and his committee could "keep them informed."

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My tape, broadcast approximately a quarter the number of times of Mr. Clurman's was entirely a response to that tape, and not to the some two months of one-sided information broadcast by Starr. As such, it could hardly be deemed to "cure" all of the prior fairness violations in which Starr had engaged.

Further, I was specifically told by Larry Miller, who recorded the tape (who submitted an affidavit supporting Mr. Eisenberg's to the contrary) that it would be aired on an hourly basis; there was particular discussion of this because I wondered whether it would be broadcast in conjunction with Mr. Clurman's tape (which was admittedly scheduled and played hourly) or separately; I was assured it would be played approximately a half-hour from his so as "not to confuse people."

The statement that the failure to broadcast my tape in the morning hours up until 9:30 was irrelevant because this is a "low-rating period" for WNCN is absurd. Obviously, on the last day ever of its beloved format, the listening audience - whatever the normal pattern - was tuned in en masse until going to school, work or whatever (usually around 8:30 - 9:00 A.M). This was confirmed by numerous persons who have asked me and other members of the Guild why only Mr. Clurman was heard on the last morning.

The Guild's other attempts to reach WNCN's listeners - through fliers at concert halls, petition efforts, etc. - have confirmed over and over, what would be obvious from the above, and from our previously submitted materials.

The great majority of WNCN listeners remained, to the end, either confused or completely uninformed as to the true nature of the "controversy of public importance" - believing that there was only one side - that reiterated literally thousands of times by the licensee and various of its agents, including the so-called "Save WNCN" Committee.

The hundreds of people who have contacted me directly, and the thousands who have called the Guild make clear that the meaning and spirit of the fairness doctrine was never "discharged" by Starr and that continuing public ignorance requires a Commission-ordered remedy of this obvious breach of licensee duty.

Kristin Booth Glen

Kristin Booth Glen

Sworn to before me this
6th day of January, 1975

Helen Krieg

Notary Public

HELEN KRIEG
Notary Public, State of New York
No. 41-2202750 - Queens County
Certificate filed in New York County
Term Expires March 30, 1975

FOR RESPONSIVE MEDIA:
CITIZENS COMMUNICATIONS CENTER
1914 SUNDERLAND PL., N.W., WASHINGTON, D.C., 20036 (202) 296 4238

x+ras

A 307

January 7, 1975

Vincent J. Mullins
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

In Re: Petition for Revocation of License of Starr Broadcasting Group, Inc. to operate Station WNCN-FM, New York, New York/ Fairness Doctrine Complaint-Application for Review

Dear Mr. Mullins:

Yesterday, January 6, 1975, the WNCN Listeners' Guild filed, through the undersigned Washington counsel, its reply to the December 23, 1974 Opposition of Starr WNCN, Inc. to the Guild's November 4, 1974 Application for Review of the Broadcast Bureau's October 3, 1974 ruling (8330-S/C9-1280) on certain fairness doctrine issues contained in the above-referenced petition.

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If there are any questions concerning the foregoing, please contact the undersigned.

Respectfully submitted,

Frank W. Lloyd

cc: Howard Braun, Esq.
David Rice, Esq.
Samuel Frankel, Esq.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re	)	
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Petition for Revocation of License of STARR BROADCASTING GROUP, INC.	)	
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to operate	)	
	)	
Station WNCN-FM, New York, New York	)	
	)	
or	)	AFFIDAVIT
	)	
Immediate submission of Renewal Application	)	
	)	
and	)	
	)	
Resolution of Fairness Doctrine Complaint and Other Relief	)	

State of New York)
County of New York) ss.:

KRISTIN BOOTH GLEN, being duly sworn, deposes and says:

I am the attorney for the WNCN Listeners' Guild and as such am fully familiar with all the prior proceedings herein. I make this affidavit in response to the "Opposition of Starr-WNCN, Inc. To Application for Commission Review of Fairness Complaint Decision" filed December 23, 1974.

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Kristin Booth Glen

Kristin Booth Glen

Sworn to before me this
6th day of January, 1975

Helen Krieg

Notary Public

HELEN KRIEG
Notary Public, State of New York
No. 41-2202750 - Queens County
Certificate filed in New York County
Term Expires March 30, 1975

A 315

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

RECEIVED
FEB 4 - 1975
F. C. C.
OFFICE OF THE SECRETARY

In re Application of	)	
	)	
STARR WNCN, INC.	)	File No.
	)	
For Renewal of License For Station WQIV-FM, New York, New York	)	
	)	

PETITION TO DENY

The WNCN Listeners' Guild, New York, New York, hereby respectfully requests the Federal Communications Commission to deny the above-captioned renewal application for Station WQIV-FM (formerly WNCN), New York, New York.

The Guild filed a Petition for Revocation, Immediate Submission of Renewal Application, Etc. with the Commission on September 23, 1974 and has filed numerous other pleadings and material since that time. In order not to burden the Commission's files with unduly repetitious material, the Guild hereby specifically incorporates by reference all material previously filed by the Guild or any other local citizen (1) regarding the Guild's standing as a party in interest in this proceeding and (2) the public interest, convenience and necessity of Starr WNCN, Inc.'s continuing

authority to operate a broadcast station in the New York City area.

Specifically, the Guild submits that the material already on file with the Commission, and sworn to by persons with personal knowledge of the facts, demonstrate, inter alia:

(1) That the WNCN Listeners' Guild, as a responsible group representing a substantial segment of the WQIV service area, has standing to intervene in these proceedings;

(2) That Starr WNCN, Inc. has changed its unique musical format, which is a financially viable format in the New York City market, contrary to the public interest, convenience and necessity, and has deprived a substantial minority of the listening public of the diversity of broadcasting material which constitutes the public interest, convenience and necessity. See, e.g., Citizens Committee to Save WEFM v. FCC F.2d (D.C. Cir. No. 73-1067, Slip Op. decided October 4, 1974).;

(3) That Starr WNCN, Inc. does not possess the requisite character to remain the licensee of Station WQIV, in that it has (a) willfully and repeatedly violated Commission

rules and policies (e.g., the public file requirement and the Fairness Doctrine), (b) has misrepresented facts to the Commission and the public and (c) has misled the listening public through its sham "Save WNCN" campaign.

Since the Guild's earlier request for relief in the form of an early call for Starr's renewal application has been mooted by Commission inaction on that petition, the Guild hereby respectfully requests that the Commission expeditiously designate Starr WNCN's renewal application for hearing on all the substantial and material questions of fact hereinbefore raised by all parties to these proceedings, placing the burden of proof on all designated issues on the licensee, or the Commission.*

The Guild hereby specifically reserves the right to amend this petition further after being served with a copy of Starr WNCN's renewal application, as required by the Commission's rules, e.g., 47 CFR §1.1201(g), 1.1223.

* It is the Guild's understanding that the Commission has conducted an investigation into Starr's activities. Therefore, with regard to those issues that the burden of proof of proceeding with the introduction of evidence is not on the licensee the burden should be on the Commission.

A 318

Respectfully submitted,

WNCN LISTENERS' GUILD
Carnegie Hall, Suite 712
7th Avenue and 57th Street
New York, New York 10019

By Kristin Booth Glen
Kristin Booth Glen

Frank W. Lloyd
Frank W. Lloyd

Charles M. Firestone
Charles M. Firestone

CITIZENS COMMUNICATIONS CENTER
1914 Sunderland Place, N.W.
Washington, D. C. 20036
Counsel for WNCN Listeners' Guild

February 4, 1975

A 319

District of Columbia)
City of Washington) SS

AFFIDAVIT

I, Kristin Booth Glen, being duly sworn, do hereby state the following:

1. That I am a resident of New York City, and am within the service area of Station WQIV-FM.

2. That I am counsel to and a member of the executive committee of the WNCN Listeners' Guild, New York City.

3. That I am authorized to represent the WNCN Listeners' Guild in its challenge to Starr WNCN, Inc.'s renewal of license.

4. That I have read the foregoing Petition to Deny and am familiar with its contents.

5. That everything stated therein is true to the best of my personal knowledge and belief.

Kristin Booth Glen

Kristin Booth Glen

Washington D.C.

Sworn to before me this third day of February, 1975.

Naomi Feldman

Notary Public

My commission expires My Commission Expires August 31, 1975.

A 320

CERTIFICATE OF SERVICE

I, Joyce Dow, certify that I have this 4th day of February, 1975, caused to be delivered via First Class Mail, a copy of the foregoing "Petition to Deny", to the following:

Howard J. Braun, Esq.
Fly, Shuebruk, Blume & Gaguine
1211 Connecticut Avenue, N.W.
Washington, D. C. 20036

David M. Rice, Esq.
Room 3014
200 Park Avenue
New York, New York 10017

Samuel Frankel, Esq.
Room 720
60 East 42nd Street
New York, New York 10017
Counsel for Classical Radio
for Connecticut

Joyce Dow

A 321

STARR OPPOSITION TO WNCN LISTENERS'
GUILD PETITION TO DENY

Dated February 20, 1975

Pages 5-6 (incorporates other Fairness
Doctrine material by reference)

A 322

(1) Whether at the time the application for assignment of license was filed, Starr made misrepresentations to the Commission as to its original intent on carrying the WNCN classical music format and, thereafter, pursuant to a predetermined plan to establish that WNCN, using the classical format, was a losing operation, deliberately operated the station in an unbusinesslike fashion;

(2) Assuming arguendo, that there was no original intent or misrepresentation by Starr to change the format, whether Starr's decision at a later date to change the format was illegal;

(3) Whether the efforts by Buckley and the "Save WNCN Committee" (whose title was later changed to the "WNCN Advisory Committee" (hereinafter "Committee")) to secure the broadcast of the WNCN format over another station were in any way improper, misleading, or in violation of law; and, if so, whether such efforts are the responsibility of Starr and should result in the non-renewal or the revocation of Starr's license; and

(4) Whether Starr, as a licensee (a) failed to fulfill its responsibilities under the Fairness Doctrine (b) failed to maintain its Local Public Files in accordance with Section 73.1202 of the Rules and (c) violated anti-trust laws when it implemented the format change, thus warranting non-renewal or revocation of Starr's license on all three grounds.

7. The alleged Fairness violations in item (4) above have already been answered in detail in Starr's "Opposition of Starr WNCN, Inc. to Application for Commission Review of Fairness Complaint Decision" filed on December 23, 1974. Such Opposition is incorporated herein by reference to the extent that the allegations by the Guild on this issue may properly be raised and considered as part of the present proceedings. However, such incorporation by reference is not a concession by Starr that the "Fairness" allegations by the Guild are germane to the present proceedings.

8. There also exists a number of extraneous and conflicting complaints and allegations in the Guild's various pleadings and documents. Without conceding the relevance or the materiality of such allegations, a number of them are discussed herein in order that no argument may later be made by any party that by failing to address such allegations, Starr concedes their relevance, or the accuracy of the facts alleged, or concedes the validity of legal positions urged by the Guild.

9. For the Commission's convenience, each of the four principal issues herein will be discussed separately.

II.

Issue 1

10. As noted above in paragraph 5, the principal basis for the Guild's charges is that Starr, prior to its acquisition of Station WNCN, planned to change the format of the station,

WNCN LISTENERS' GUILD REPLY TO STARR OPPOSITION

Dated April 10, 1975

Pages 24-34
Exhibits A
D (omitted because irrelevant to Fairness Complaint)
I
J (with attacments)
L
M
O (with attachments)
P
S
V (omitted because transcriptions of tapes reproduced in Commision decision)

Again, the Guild stands on its former position, buttressed by these authorities, and suggests that only hearings can finally determine this crucial but strongly contraverted issue.[41]

III. The Buckley Pledge Campaign.

From the outset, the Guild has claimed that the "Save WNCN" campaign orchestrated by Mr. Buckley, constituted a fraud and deceit on the public requiring the most serious sanctions. See e.g. Guild Sept. pet. at pp 53-56.

Promising listeners something you don't have or can't get, in return for their money, is a violation for which broadcasters are severely punished (e.g. Exhibit D). The Buckley campaign, it has been alleged, was no more than a rigged contest in more sophisticated attire.[42] See e.g. MORE, Exhibit B)

Starr attemps to sidestep these allegations by two classic ploys,-- the duck and the feint. Neither convinces.

[41] There is reason to believe that financial viability is not actually the issue for Starr, but that only immense profitability (i.e., a "1000% profit") will satisfy them. See Glen aff., Exhibit O, p5 , Exhibits I and S). The cases, however, clearly do not support avarice as a justification for the destruction of a unique format.

[42] It is interesting in this respect to note that Buckley's admired program director, David Dubal, heard of the scheme not from Buckley (although he had written and called him) but from none other than Richard Oppenheimer (Dubal aff., Exhibit J, p2)

First, Starr claims that the Guild has submitted "no hard or direct evidence" of any impropriety in the pledge campaign. If we have not made this issue perfectly clear before, the attached exhibits[43] and the following chronology should suffice.

On August 28, the format charge was announced in the press by Mr. Buckley.[44]

On August 29 WNCN broadcast his first tape, promising

> "the continuation of the format, together with its musical director and its announcers,[45] on another channel."

In this tape Buckley also promised that contributions would be tax deductible (E hibit V-1) There was, at that time, no entity with tax deductible status to receive the monies requested, nor was any such entity ever created.

On September 3, Buckley again promised that if the pledge goal was met,

> "the result will be a continuation of the music in the unique blend you've become accustomed to--[but without] commercial advertising"(Exhibit V2)

[43] particularly MORE, Exhibit A, Labaton aff. and attachments, Exhibit L, Marotta aff. and attachments, Exhibit M, Shack aff. and Clurman tape, Exhibit U, and Pledge tapes by Wm.F.Buckley, Jr., Exhibit V1-5.

[44] It is important to note the difference between a leaked to, or discovered by the press, and what was actually told to listeners over the air.

[45] The announcers and staff were never, at this time, or when later, similar announcements were aired, consulted about this or offered jobs. (See, e.g., Dubal aff., Exhibit J)

On September 5 Buckley met with representatives of WBAI, WNYC and WFUV. All indicated that they could not possibly meet the conditions he had set,- i.e., 24 hour adoption of the WNCN format--because of their own particular commitments to their listeners. All, however, expressed continuing interest in the record library (Labaton aff., Exhibit C, Marotta aff., Exhibit M).

On September 8, Buckley broadcast another tape, again stating that his promise "that New York's finest fine music station will continue to serve the community" would occur if the pledge goal was met (Exhibit V4), although he now knew that this was not the case (Buckley affidavit, p7).

Also, on September 8 Buckley broadcast a tape stating that a foundation had pledged $100,000. (Exhibit V4) At the time of this announcement, the mysterious"Merlin Foundation" did not exist as a legal entity; it was not incorporated until almost two weeks later (MORE, Exhibit A).

Between August 29 and September 15, WNCN's listeners mailed or pledged over$500,000 in response to these requests.

On September 15 Buckley broadcast another tape, for the first time indicating that the three (still unspecified) stations with which he had been meeting[46] all had

[46] The Times had reported their identities earlier. Ex.M, Attachment A)

"difficulties" but that he was confident they could be "overcome" (Exhibit V5) although, of course, it was by then perfectly clear that they could not.

On September 11, the Times reported that Buckley had appointed an Advisory Committee (Exhibit L, Attachment C). Persons at the station who had, at Buckley's request, been instrumental in the pledge campaign from the beginning, begged to be placed on the Committee as a show of good faith, but their requests were entirely ignored. (Dubal aff.,Exhibit J, pp2-3)

On September 15, Buckley announced to listeners the appointment of members of his "Advisory Committee" (Exhibit V5).

On September 25 WFUV made a counter proposal which was hand delivered to Mr. Buckley (Exhibit M, Attachment B) with the request that it be referred to his Advisory Committee for immediate consideration. Mr. Buckley did not refer the proposal (Marotta aff., Exhibit M).

On October 2, WFUV released its proposal to the New York Times (Exhibit M, Attachment O). Richard Clurman, the Chairman of the Advisory Committee had to call WFUV to find out what the proposal was. A copy of the proposal was then sent to him (Exhibit M, Attachment E).

On October 4, WFUV learned from the Times that

the Clurman committee was considering the proposal.

Subsequent to that date WFUV never heard again from either Buckley or Clurman as to its specific proposal, nor were any modifications or counterproposals ever communicated to it (Exhibit M).

A proposal made formally by WNYC on September 25 (orally) and September 30 (in writing, Exhibit M, Attachment D) was similarly never specifically accepted or rejected, and there were no further discussions, proposals or counter proposals (Exhibit LO.

On November 6, a tape by Mr. Clurman was broadcast in which he stated that his committee was pursuing alternatives

> "ranging from our maximum objective, the complete recreation of the ..WNCN format on another comparable 24 hour a day FM frequency, to such lesser options, involving only an increase in the classical music on stations that already play some..." (Exhibit U, Attachment A)

This was by the Guild's records, the first occasion on which listeners and/or pledgers and donors were told that a lesser alternative was being considered, and that the original Buckley promise was apparently not to be kept.

Looked at in this "hard or direct" light, the following facts are clear. The public was solicited for

extremely large quantities of money,[47] based on promises which, almost from the beginning Buckley knew could not be fulfilled as he had described them. Other false inducements (i.e., the non-existent tax deductibility of contributions) were offered, a contribution by a mysterious and possibly sham foundation was used as additional bait and the listening public was told far less than was available--or than it needed to know in order to adequately assess the scheme.[48]

Finally, although continuing to assure the public of his good faith, sincerity and devotion to the cause, Mr. Buckley's actions totally belied his representations.

[47] The fact that most was in the form of pledges, and only some (apparently around $14,000.) was in cash or checks is irrelevant. In the ordinary rigged contest, no money is solicited at all. Nor is the fact that the money was finally returned almost 6 months later relevant.

[48] For the sake of relative brevity, we will not here reiterate the allegation, made by many commentators (e.g. Alan Rich in New York Magazine, a New York Times editorial, MORE,) that the purpose of the campaign was to divert listeners from legitimate protest to the Commission and/or their duly elected representatives. (See Guild Sept. pet. at pp53-56) We stand on th[illegible] allegation and believe that it is of a sufficiently serious nature in and of itself to require non-renewal of Starr's license.

When an extremely serious and extensive proposal to substantially increase the amount of classical music broadcast was made by WFUV and hand delivered to him, Mr. Buckley apparently lacked sufficient interest or involvement to even forward that proposal to his hand-picked advisory committee.

As far as the Guild is aware, Mr. Buckley then divorced himself totally from the campaign and the efforts he had promised to make, notwithstanding its total failure to produce any results. He emerged again only to deny the Guild access to the list and letters of pledges which it had repeatedly requested[49] (Glen aff., Exhibit A, Attachment A).

The facts, we submit, speak for themselves.[50]

[49]The Guild's position concerning these names and letters has been repeatedly expressed (See e.g., Guild Oct. Reply at pp 25-26; Guild Motion for Protective Order dated Feb.3, 1975) and will not be repeated here.

[50]The facts also include the extraordinary valuation of $750,000. placed on the record library when Buckley and Starr proposed to "donate" it to a non-profit institution. Here a picture is worth more than a thousand words (See Exhibit P). Generously assuming that "over 13,000 records" means 15,000 records, the Buckley figure (promising tax deduction for Starr in excess of all its losses on the station) would assess each record's value at approximately $50. This is typical of the "spirit" with which the campaign was conducted!

Second, employing a venerable debating technique, Starr - and Buckley - attempt to divert attention from their actions by somehow blaming the Guild for "sabotaging" their plan which, we are led to believe, would otherwise have succeeded.

But for the number of times this red herring is displayed (another traditional technique) the Guild would see no reason to discuss it. As it has, however, apparently become Starr's new theme[51] we would put it to rest once and for all.

The Guild's participation in the committee's activities, though of extraordinarily limited nature, is fully set forth in the Glen, Brodnax and Schack affidavits (Exhibits O, I and S).[52] We see no need to repeat that material here since the issue has now been totally resolved by a

[51] For example, Starr claims that the Committee's "failure" to date may well be due to "efforts by Guild principals to sabotage the objectives of the Committee" (Starr Opp. p37). Buckley charges that the Guild "appeared to be making every effort to sabotage [the Committee's] possible success." (Buckley aff. p8) Peter Starr makes similar charges of "sabotage" (P.Starr aff., p10)

[52] Those affidavits also contain information about the numerous ways in which the Guild attempted to aid the Committee and/or other efforts made to restore or increase the amount of classical music available in New York. Ms. Glen's affidavit (Exhibit O) corroborated by that of Arnold Labaton, Director of WNYC (Exhibit L) also answers Starr's question (Starr Opp. p30, n.9) as to whether the Guild planned to do anything about the threatened loss of WNYC's classical service. The answer, simply, is that it has.

letter from Richard Clurman, Chairman of the Committee, disclaiming all charges of Guild "sabotage" (Exhibit O, Attachment C)

As the "Committee" itself disavows these charges, it ill behoves the Messrs. Buckley and Starr to raise them again.

IV. Allegations of FCC Rule Violations.

As to the Guild's previous allegations of violation of the Commission's rules concerning the public access file (See, e.g., Guild Oct. Reply at pp 24-26) and fairness doctrine violation (e.g., Guild Oct. Reply pp 27-28) the Guild relies on the papers already filed, calling Commission attention to documents subsequent to the Guild Oct. Reply which are also relevant.

With regard to the public access file, See e.g., Guild Motion for Protective Order dated February 3, 1975[53].

[53] On approximately Feb.4, the Guild became aware of ex parte correspondence between the Commission and Starr regarding violations of this rule and instructions that those violations be corrected. The Guild wrote to the Commission on that date, requesting copies of all such correspondence and further requesting an end to all confidential and/or ex parte communications. The Guild has as yet received no reply from the Commission, but urges that whatever documents are in its possession concerning the public file be turned over to the Guild and considered on the merits of this issue.

For arguments and documentation concerning Starr's violation of the fairness doctrine see e.g.,Guild Opposition to Starr's motion for Extension of Time (Fairness Complaint) dated November 22, 1974 and Guild Reply to Opposition to Application for Commission Review of Fairness Complaint Decision dated January 6, 1975.

V. Legal Argument

Starr concludes its "Opposition" with a legal argument on the criteria which must be met before a hearing will be designated. We have little quarrel with the general propositions Starr offers, i.e., that there must be "substantial" and "material" questions of fact raised by a petition which is supported by affidavits based on personal knowledge.

The conclusions they draw, however, are wholly at odds with the reality of this case. There are now innumerable material questions of fact which have been placed in direct issue by the pleadings of both parties. There can be no question that in this and previously filed pleadings, the Guild has clearly met the decisional and statutory requirements for a hearing.

One additional decision may now also appropriately be considered. In Southwestern Operating Co. v. FCC 351 F2d 834 (DC Cir 1965) the Court of Appeals found that a hearing must be held when the nature of the proceeding itself had become so

complex that,

> "...the truth was becoming obscured rather than revealed by the mounting pile of papers" id. at pp 837-838.

CONCLUSION

For all the above reasons, and based on the exhibits here filed and all the prior proceedings herein, Starr's renewal application license to operate WQIV should be denied, or hearings should be held thereon.

Respectfully Submitted,

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Counsel for WNCN Listeners Guild

April 10, 1975.

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Illustrated by Paul Richer

The Fight To Save Mozart

BY MICHAEL MELTSNER

MORE, April 1975
Volume V, No 4
P 20
EXHIBIT A

I think back on the night before, Roslyn Tureck playing the saraband, the excitement that she causes, the strain with which one listens, concentrates to hear the little, noiseless appoggiaturas . . . .

* * *

My family apart, I am as fond of Peter [Starr] as of any human being. Indeed, I feel for him that special affection I reserve for anyone who has made me a million dollars.

—William F. Buckley, Jr., *Cruising Speed*

When William Buckley decreed that New York's WNCN-FM abandon the classics for "progressive rock," he didn't count on triggering the largest listener protest in the history of the FCC.

As WFB himself might put it with eyebrows at the ready, it probably seems a trifle indecorous in these vincible times to be making a big fuss over the dispatch of Wolfgang Amadeus Mozart and Johann Sebastian Bach from the New York area FM band. But tamper with symbols of cultural value and you threaten the heavy investment of a lot of people. No smaller conception fully captures why dropping the classical music format of a tiny radio station called WNCN-FM in favor of "progressive rock" has set off the most intense listener protest ever mounted before the Federal Communications Commission: 90,000 petition signers, 4,000 letters, complaints from a long list of music world celebrities, the New Jersey legislature, the New York City Council, a senator, three governors, two dozen members of Congress and countless other politicos. With the daily unraveling of the national economy, some stirring in the depths must account for no less than four *New York Times* editorial pleas to preserve Mozart, pickets chanting "We want Bach" before the corporate offices of a previously obscure company known as the Starr Broadcasting Group, and 20,000 music lovers pledging almost half a million dollars in two weeks to keep them safe from the Rolling Stones.

The conduct of William F. Buckley Jr., chairman of Starr's board, is especially curious. A while back, he filled three pages of *New York* magazine trading insults with music critic Alan Rich, created a committee of establishment bigwigs (chaired by New York City Center president Richard Clurman, and including Dr. Frank Stanton and Theodore Sorenson) to help save the very classical format he doomed, and announced a $100,000 grant to subsidize the format from a charitable corporation that didn't exist at the time of the pledge.

All this has been reported in New York with a certain routine competence. But perhaps the most important aspect of the story—the interplay of law and economics that follows when listeners and broadcasters square off before the FCC—has largely been ignored by the press. So long as center stage was held by the on again-off again format change, laments for "good music" and name-calling (Rich called Buckley a double-talker and Clurman a "master of inaction and elegant evasion"; Buckley replied that Rich "struggles under the burden of thought"), reporters kept their

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Michael Meltsner is a professor of law at Columbia University and the author of Cruel and Unusual Punishment (*Random House*).

notebooks out. Once it became clear that a drawn-out contest before the FCC and the courts would likely decide NCN's future, they put them away. In the 20 years since Anthony Lewis pioneered serious coverage of legal matters for the *Times*, many journalists have proved they can master and coherently present complicated legal issues under deadline pressure. Many a lawyer has learned more about the criminal law from Lesley Oelsner's *Times* coverage of Watergate than in a law school classroom. But this type of sophisticated coverage is usually restricted to legal beats (courts, crime) or to coverage of major trials. In these instances, the legal issues loom large. In many other stories—WNCN very much among them—the legal tangle is central but seldom perceived as such. The press tends to get bored or put off by the complexities. More about this later, but first the story so far.

Starr Broadcasting was founded in 1967 by Buckley and his young protégé, Peter Starr, and quickly grew from two to 15 radio and television stations; in six years, gross revenues have climbed from $41,000 to $21 million. Along the way Starr went public, making a bundle for the original stockholders. The company purchased Arlington House publishers and acquired the habit of buying financially troubled stations cheap, changing their format and turning a quick profit. But the public clamor over the NCN affair plainly has hurt the company. Starr's license now is clouded by the possibility of a commission decision that closing down New York City's only 24-hour-a-day classical station was a failure to operate in the public interest. Whether classical programming will return to NCN is unsettled and will likely remain so for awhile—the FCC usually proceeds adagio.

One of the reasons NCN may be brought back to life is that its supporters are fighting over a friend of the family. Some of the protest is from classical music professionals like concert manager Peter Gravina, who signed up 20 singers and musicians (Franco Corelli, Eugene Istomin, Licia Albanese) to decry the loss of one of New York's few media outlets "where concert artists can be interviewed and their recordings can be heard." Another is David Greer, whose music school serves a high percentage of black and Puerto Rican students without a concertgoing background. "If we touch the imagination and interest of a child who has neither records nor concerts available to him," Greer told the FCC, "NCN provides a means for him to hear the entire spectrum of classical music." Catholic priest Kevin M. Brandt spoke for another sizable group of NCN listeners when he complained to Buckley that NCN was a "refuge of musical gentility and civility in the midst of the barbarians' blare and babble" from other radio stations.

For 15 years, NCN's pre-Starr owners, the National Science network, kept the station understaffed and never seriously promoted the classical format or explored its profitmaking potential. Still, in broadcasting circles it was thought that NCN's low-key advertising and high musical standards held a core of devoted followers. Classical music listeners are usually affluent, targets for sponsors selling high-priced electronic equipment and Caribbean vacations, but they are nowhere a large part of the radio market, even in New York, home of more musicians, concertgoers and record buyers than anywhere else in the world. Classical record sales are tiny in comparison to rock, and slipping; if the Beatles are more popular than Jesus, you can imagine where Bach stands in the ratings. (In audience size, NCN's estimated 400,000 regular listeners were at the bottom of the charts.)

But what a classical audience lacks in numbers it makes up, at least potentially, in loyalty to the station and, when cultivated, advertisers. Chicago's WFMT makes a yearly six-figure profit, in a market that includes two other "serious music" formats, by holding the allegiance of music lovers and selling their purchasing power to sponsors who believe that they can link love of Beethoven to their brand of imported cheese or hi-fi tuner. Over the years, belligerent WFMT listeners have backed the FCC into several corners, once when the station was threatened by short spacing (location of an interfering signal too close on the FM dial) and more significantly when sale of the station augured a switch to pop. But NCN listeners were never thus tested—given a choice of supporting the station and its advertisers or letting it die—until it was too late.

When Starr purchased NCN in 1972 at the bargain price of $2 million, it represented that the station would play "classical, concert, and symphonic" music at least 70 per cent of the time—ducking questions of format change at the time the FCC approved the sale. As late as last August, Peter Starr denied a shift was planned, even though it was then in the works. On Aug. 27, after Allan J. Eisenberg, program director of Starr's Kansas City rock station (KUDL), paid a visit to check out NCN's physical plant, chairman Buckley finally admitted that Starr intended to convert NCN to a rock station called WQIV. He claimed that the company sustained heavy losses (over $300,000) with classical music and could no longer put up with advertiser indifference. Buckley didn't say so, but Starr was hurt by soaring interest costs during 1974, a particular problem for a company with a number of recently acquired bank-financed properties. Buckley, who once called rock "non-music," went on to deplore the cultural loss, insisting that *he* would never listen to the new format, and explaining that Starr had obligations to its stockholders to operate in the black.

The day after Buckley wielded the ax, he tried to find a home for the head, pleading with listeners to "save WNCN" with pledges that would induce a noncommercial station to adopt the classical format. Despite the Labor Day weekend an astonishing 7,000 letters pledging $100,000 arrived at the station by Sept. 3. Buckley also promised that a benefactor called the Merlin Foundation would give $100,000 to the new station and that Starr would donate NCN's 11,000-record library to any noncommercial station deemed worthy by the Buckley-selected citizens committee headed by Clurman. By Sept. 13, two days before Starr called off the campaign, pledges totaling $500,000 (including the Merlin money) had been received from 20,000 listeners.

When the final installment of the NCN story is played, Buckley's decision to solicit listeners in the hope another station would take over the classical format—mooting a legal challenge to QIV—may turn out to have been a critical blunder. The only completely persuasive rebuttal to charges that Starr's "sweetheart" campaign funneled names and dollars to the company's private control will come if the Buckley "Save NCN" plan works. At this point it is stalled (though Buckley told listeners he was "confident" a noncommercial station would be found by last Oct. 1), and the contributions he solicited are being returned. There is simply no more space on the spectrum for another New York FM signal; no existing station has heeded Clurman's call to increase dramatically classical music programming (a decision which might put the station in trouble with *its* listeners).

Soon after Starr announced plans to drop the classical format, Dr. Jesse Werner, board chairman of GAF—a major producer of chemicals and photographic equipment—wrote Starr offering to help save NCN. Clurman learned of Werner's interest and put him in touch with WRVR, an FM station owned by the Riverside Church. RVR has been losing money for years (though the tide of red ink has been slowed recently by the introduction of heavy jazz and Latin music programming) and the church would clearly prefer to spend elsewhere some of the money that now subsidizes the station. Sale of RVR to a group committed to replacing

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music that has a wide appeal to blacks and Hispanics with a format supported by middle-class whites would be a delicate problem regardless of the broadcaster, but when the station is owned by a socially conscious church located on the fringe of the ghetto, both the political and the legal (a possible FCC challenge to the sale) issues are extremely sensitive. Last November, Clurman's suggestion in a television interview that RVR was for sale and that WNET, New York's public broadcasting station, was a possible buyer prompted an immediate denial from the RVR board.

RVR and GAF have kept the "negotiations," as GAF calls them, or "explorations," as characterized by RVR's lawyer, James Greely, a secret—until Feb. 25, when GAF confirmed to television reporter Les Brown of *The New York Times* that it was negotiating with RVR to provide programming "in essentially a classical format and to do it at a profit." The *Times* story so incensed Greely that within hours he terminated conversations with GAF. "The publicity," he said, "damaged relations with staff, advertisers and listeners." Brown says he can't reveal more than that the story was based on a tip. Clurman denies initiating the piece. A GAF spokesman professed ignorance as to the withdrawal and insisted that the company was still interested in dealing with RVR. "After all, we have been talking to them seriously for three months."

Even before prospects faded for a quick transfer of the classical format, Buckley faced a public challenge to his honor. Skeptics noted that many who had responded to his appeal were diverted from sending money to bona fide listener groups and that Starr had turned an 11,000-disc record collection (valued at $750,000 by Starr but at closer to $10,000 by Ray Norstrand of Chicago's WFMT) into a whopping tax deduction. A good deal of confusion also centered on the $100,000 pledge from Merlin, a foundation both totally unknown in New York fund-raising circles and with sources of funds foundation officials and Buckley refused to disclose. According to papers on file with the Secretary of State in Albany, Merlin wasn't incorporated until two weeks after Buckley announced the pledge. The name of the donor—a matter never reported by the New York papers—is Audrey Sheldon, granddaughter of the founder of the Merck pharmaceutical empire.

Within two weeks of Buckley's announcement of the change to rock, mistrustful listeners had formed two organizations, the WNCN Listeners' Guild and Classical Radio for Connecticut; retained Washington lawyers, including experienced communications litigator Frank Lloyd, of the Citizens' Communications Center, and petitioned the FCC to lift Starr's license. But the FCC refused to block the change to rock pending a final decision about license revocation. The Federal Court of Appeals, which hears appeals from FCC decisions, stayed the change for several weeks, ordered Starr not to dispose of the record library, but refused to intervene until final FCC action.

On Nov. 7, NCN became QIV by interrupting Mozart's Requiem with a song called "Roll Over, Beethoven," giving several classics lovers apoplexy. In the six weeks following the change, QIV tried all manner of gimmickry—astrology spots, free classified ads, youth-oriented news programs—as well as quality rock programming to attract listener support and advertising. "It will take a while," said Eisenberg, who became general manager, "but I am confident we'll make a profit with rock." Until mid-January, there was no reason to doubt his judgment—all of Starr's other stations are money-makers. Then he and station manager Larry Miller resigned,

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because, according to Eisenberg, a nervous front office was afraid youth features they brought from Kansas City would not work in New York. "I'm very disappointed," he told me. "Revenues were up, listener and retailer response was favorable. But people in the industry called what we were doing "college radio"; it was just new and different. I didn't think QIV could make it if it was just another rock station." Richard Oppenheimer, the executive Starr brought in from New Orleans to run the station, would not discuss the nature of the differences between the company and and Eisenberg but insisted they implied no change in the economic viability of the progressive rock format: "Advertisers like it, and we are staying with it."

Which brings us to the law. For Starr's greatest threat isn't competition from New York's other rock stations—of which there are at most two (if you believe Eisenberg), or from half a dozen to 40 "depending on your standard" (if you believe Kristin Booth Glen, a Listeners' Guild founder and its counsel)—but from its coming battle at the FCC. Yet nothing written about NCN has done more than hint at the legal issues involved.

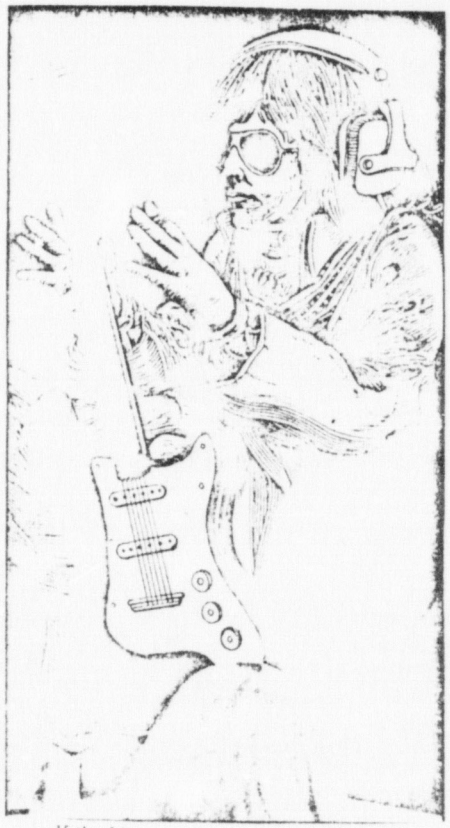
The FCC position on entertainment format changes is clear enough—they are the business of the broadcaster, not Federal regulators. At triennial license reviews or when a station is sold, the FCC will consider whether a station's programming balance meets community needs. But the FCC has denied license renewal infrequently, usually to broadcasters whose sins are so cardinal as to suggest suicidal tendencies. Recently, however, the commission has been pulled kicking and screaming to the brink of format regulation.

In 1968, the Strauss Broadcasting Company (Strauss being Robert S., the Democratic party chairman), attempted to present on WGKA-AM and FM, Atlanta's classical stations, "a blend of popular favorites, Broadway hits, musical standards and light classics." The FCC brushed aside a citizens group protest because more Atlantans preferred the Strauss format to classical music. But the Court of Appeals, which for years has needled the FCC's unresponsive attitude toward listener groups, ordered a full hearing. The court stressed that there were 20 radio channels in the Atlanta area playing pop and rock, but at most one besides WGKA that broadcast classical music. The FCC thought it significant that *only* 16 per cent of Atlantans questioned by Strauss favored the classical format; the court found 16 per cent large enough an audience to protect from musical disfranchisement. Before the commission acted, Strauss unloaded the stations to a broadcaster who retained classical music on the AM frequency.

Since Atlanta, the issue has been joined in half a dozen cities. Sometimes the change sought has been from rock to pop or from "all news" to country and western, but the most heated battles have involved attempts to drop classical music. Last October, for example, the Court of Appeals ordered the commission to decide if the classical format of Chicago's WEFM served "a specialized audience that would feel its loss." The case is still pending. As a result of the Atlanta and Chicago controversies a return of NCN's format depends on three questions: *First*, did Starr lie to the FCC about its intentions when it bought NCN in 1972? *Second*, will disappearance of the format deprive a substantial segment of the community of a distinctive listener preference or, put another way, is the format unique? *Finally*, is the classical format financially viable?

The Listeners' Guild contends that when Starr purchased NCN it already intended to switch to more profitable rock programming. Because Starr represented otherwise to the commission, the guild argues that the transfer was illegal and that the FCC should lift Starr's license. Unless a Starr version of the Watergate tapes surfaces, however, the guild's case on misrepresentation is likely to be circumstantial, built on evidence such as one former employee's allegation that management told him of the switch almost two years ago, and another's charge that Starr merely went through the motions in trying to sell advertising on WNCN; a March 1974 meeting with disc jockey Murray the K, at which Peter Starr heard the disc jockey's plan for an NCN rock format, and management's misleading denials of the impending change.

The importance of misrepresentation, which is stoutly denied by Starr, is not merely that corporate executives may once more have been caught fibbing. The FCC is especially sensitive to false statements made by broadcasters (far more than to plaints that a station is ripping off the public with a steady diet of banality and commercials). To process complaints, license renewals and transfer applications concerning over 7,400 radio and television stations, with even an appearance of competence, staff investigators must rely on documents supplied by broadcasters. To misrepresent fact on one of these submissions is to tear at bureaucracy's security blanket: its trust in paper. It is no accident that in 1971, when the commission first denied renewal because of violation of the fairness doctrine (which requires broadcasters to present both sides of controversial questions), it wasn't so much because of the steady diet of right-wing propaganda broadcast over Media Pennsylvania's WXUR by the Rev. Carl McIntire, but because McIntire had the bad sense not to tell the commission that he intended to replace entertainment shows with programs later characterized by a station employee as "the hate clubs of the air."



If the Listeners' Guild cannot persuade the FCC to find Starr's acquisition of NCN tainted, the commission will have to decide if the classical format is so distinctive that in order to hold on to a New York license, Starr has to play Mozart or sell to someone who will. NCN loyalists believe its rival, *New York Times*-owned WQXR (with 77 per cent of the classical audience), is musically inferior, awash as it is in pop classics, symphonic chestnuts, musicological blather, news-on-the-hour and commercials. In any event, QXR does not broadcast 24 hours a day and this, plus the outpouring of support for NCN from listeners and politicians, certainly makes it likely that the FCC will find that the NCN classical format wasn't duplicated by any other station.

But how far will the commission go in telling a broadcaster to air one type of programming exclusively? The FCC argues that stations should make format choices because market forces, when left alone, pressure broadcasters to fill entertainment voids left by their competitors. But stations cater to advertisers, who in turn aim at particular groups of listeners—exclud[illegible] audiences for certain formats if advertisers ar[illegible] after, say, young adults. No one would contend that government could step in to halt *The New York Times* from earning high profits by adopting the journalistic approach of the city's other dailies because in the print media the First Amendment means that government keeps hands off. Broadcasters, of course, are on a different footing. The FCC is supposed to protect freedom of expression by making sure broadcasters present varied ideas and cultural expression, not by encouraging competition. In Chicago's WEFM case, seven judges of the Court of Appeals lectured the FCC that its job was to *preserve* formats "that would otherwise disappear" when they were economically viable and "preferred by a significant number of listeners."

The FCC has refused to accept this larger role in format regulation, claiming a reluctance to play "national arbiter of taste" and fearing listener demands that it intervene whenever a local station expands, contracts or eliminates a program about which some group has strong feelings. But this won't wash. New York radio offers a wide range of nonclassical programming. NCN is hardly likely to create the diversity problems which might arise in a smaller market. In the end, then, if the FCC bucks the court in the NCN case, it will probably be over the issue of the classical format's financial viability.

The Listeners' Guild has filed mountainous documentation with the commission, much of it disputing that NCN cannot make a profit competing with QXR, and questioning whether Starr offered an adequate justification for its claimed losses. The facts will remain in doubt until FCC examiners complete an investigation of Starr's business practices. But regardless of these findings, the FCC will worry that by taking a hard line with a station that wants to change format because of financial losses, it will reinforce broadcaster reluctance to experiment with untried formats out of fear of being locked into an unprofitable operation. Owners of a marginal "Top Forty" station, for example, might decide *not* to enter the classical market because, once in, there would be no escape.

While such "lock-in" problems are real, they shouldn't affect the NCN case—where the issue is not whether Starr could have made a profit, but whether it can do so now. On this point, it is difficult to disagree with WFMT's Norstrand who says that "today NCN is a potential gold mine," having gathered a million dollars worth of publicity, extraordinary support and what the guild calls "identifiability and recognition factors" that are attractive to advertisers. Starr is going to have a difficult time persuading the FCC that the carload of pledges good enough to subsidize some other station's classical format is insufficient to preserve Bach on NCN.

The guild, therefore, has a strong legal position. But the FCC's record when listeners challenge broadcasters is dreary. NCN is defunct,

replaced by a station cultivating its own audience loyalty. Still Starr's license is up for renewal this year, and on Feb. 4 the guild petitioned the FCC to deny renewal. If the commission decides that the guild's challenge involves factual disputes that require a hearing, the costs of litigation alone may bring back the NCN format, or a reasonable facsimile. Once the legal, travel, stenographic, printing and witness fees are added up, Starr may pay several hundred thousand dollars to defend itself even if it wins, and face loss of its license and investment if it loses. (Which may explain one rumor about the RVR-GAF negotiations in February, to wit: that whoever tipped the *Times* was eagerly trying to prod the negotiators so the GAF purchase would go through in time to restore Bach to the airwaves and thus moot the Listeners' Guild challenge to Starr.) Whatever the case, the guild now enters any hearing in a superior bargaining position, because it relies on volunteers, contributions and foundation-supported public interest lawyers.

In the past, broadcasters facing an FCC hearing have caved in and negotiated a settlement with insurgents, and Starr's lawyer, Peter Shuebruk, concedes that "the economics of a hearing are murder." But he insists that "there can't be any compromise, so long as the guild demands a return to an unprofitable format. That's the one thing we can't do."

So NCN remains silent, snared in the law's delay. One has to feel sympathy for listeners who are cut off from music that was an intense part of their private lives, and for the dismissed NCN staff; but in return for the promise of profits, Buckley is also taking a few lumps. He may have made his million, but he is a person of standards, a leading Catholic layman, a man who knows his sarabands. Turning to QIV recently, I heard a skit on one of its new programs that must have lowered Buckley's nose a bit as he contemplated the consequences of balance sheet aesthetics. A father vigorously reprimanded his son for the youth's disregard of religious value. The son, finally cowed by his father's verbal assault, apologized profusely; whereupon, the father cooled off and changed the subject. "By the way, son," he remarked, "you sleep with your mother tonight. It's my turn with your sister." Such are Mr. Conservative's strange bedfellows these days in the world of money and music. ■

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JESS BRODNAX, being duly sworn, deposes and says:

I am the Secretary of WNCN Listeners' Guild and have made several prior affidavits in this case. I reaffirm the prior affidavits and make this one in response to certain allegations contained in Starr's Opposition to WNCN Listeners' Guild Petition to Deny of which I have personal knowledge.

Together with Kristin Booth Glen and Robert J. Shack I attended a meeting at Richard Clurman's office on October 30, 1974. I have read Ms. Glen's affidavit as to the occurrences at that meeting and it corresponds with my personal recollections.

Subsequent to the meeting with Mr. Clurman, a Guild Board meeting was called so that the entire Guild Board could be informed of and respond to those proposals made by Clurman. At that meeting, which occurred on October 31, I was elected Secretary but because this did not occur until late in the meeting, I did not take notes or minutes as has subsequently been my custom. I believe that notes were taken by another person present at the meeting, but my attempts to find the originals have been unsuccessful.

EXHIBIT I

I do, however, have specific recollection of the meeting and of the discussion about proposed Guild involvement in the plan to solicit further pledges so that WRVR could be purchased and turned over to Channel 13 to be run. While Ms. Glen, Mr. Shack and I had thought that some members of the Board might be in favor of such a plan, all discussion was unanimously opposed to Guild participation. The reasons for this opposition were several.

First, it was felt as a moral and ethical matter that our organization could not participate actively in disenfranchising the listeners of another unique format.

Second, persons present raised the point of how such an action by the Guild would reflect on citizens' groups all over the country in their attempts to protest the disappearance of other unique formats.

Third, people had serious reservations as to whether the Clurman plan could actually succeed either because of the technical difficulties of raising sufficient capital to purchase WRVR, or because of a listeners' protest which almost everyone present were sure would arise.

There was absolutely no discussion of the Guild instituting such a protest or of soliciting or generating one. It seemed obvious, however, that especially given the

publicity we had received, that some jazz lovers would see a similar possibility for preserving their favorite format.

The discussion ended with a unanimous resolution that our counsel inform Mr. Clurman that for all of the reasons discussed, the Listeners' Guild could not actively or officially participate in the plan which he had proposed.

To my knowledge there has never been any attempt whatsoever to sabotage or otherwise effect any activities either of the Clurman committee or of anyone else who sought to restore WNCN's unique format to the air. On the contrary, the Guild has taken all possible steps and pursued all ideas and suggestions to accomplish this end. As far as I am aware, the organization's relations with Mr. Clurman have been cordial and respectful, although it has always been clear that our ultimate goals were different.

Jess W. Brodnax

Jess Brodnax

Sworn to before me this
8th day of April, 1975.

Kristin Booth Glen

Notary Public
KRISTIN BOOTH GLEN
Notary Public, State of New York
No. 31-9870150
Qualified in New York County
Certificate Filed in New York County
Commission Expires March 30, 1976

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

DAVID DUBAL, being duly sworn, deposes and says:

I am the former Program Director of WNCN-FM, New York, and I have made two previous affidavits in this case. I reaffirm the contents of those affidavits, and make this one in response to Starr's "Opposition to Guild Petition to Deny" which I have read and with which I am familiar.

Without repeating what I have said in previous affidavits, I would call attention to particular misstatements of fact which appear in that document and its supporting affidavits. For the sake of convenience, those "facts" and the true circumstances as I know them, will be divided by subject matter.

The Pledge Campaign

I first knew that the format was changing when Ralph Lowenstein, an announcer, and I overheard remarks to that effect by Ed Oberst on August 22. I immediately wrote a letter to Mr. Buckley inquiring as to the real facts, and urging him to act to save the station. A copy of that letter is Attachment A, hereto. I received no reply at that or any other time.

EXHIBIT J

I first heard that there was to be a pledge campaign to put the WNCN format on another station not from Mr. Buckley, but initially from Paul Wachsmith on August 29, and subsequently from Dick Oppenheimer.

After the first announcement, when volunteers began coming to the station, I told Wachsmith that I hoped this was not a rip-off and that I wanted to talk to Buckley about it, particularly as he hadn't answered my letter, or returned the telephone call I made to his office.

That night Wachsmith called me at home and told me to come to the station because Buckley was there. Bob Adams and Elise Topaz were also present. Buckley told us of an "anonymous donor" who was willing to give $100,000.00 to build a transmitter for the "new" station. Buckley then wrote out (on the typewriter) his statement requesting pledges, made a tape and left. I never saw or spoke to the man again despite my position at the station or aiding his pledge drive.

When Buckley announced the formation of the committee headed by Mr. Clurman, I was surprised and shocked that I was not asked to be a member or to attend meetings, since I had personally gone on the air, at Buckley's implied request, asking for pledges and begging for listener support.

Because I put myself and my reputation on the line and worked continuously during the pledge drive I could not believe that this had happened. I begged Wachsmith and Oppenheimer to put me on the committee, along with Elise Topaz and Peter Kaminsky, who had been in charge of the volunteers. We believed that without a presence from the real workings of the pledge campaign, the Clurman committee could in no way be representative of the listeners who had responded to our pleas.

As our requests were totally ignored, I came to believe that the entire situation was farcical, particularly when I was never contacted by Mr. Clurman or any member of his committee. This was particularly bizarre since he made a tape which was repeatedly broadcast and which indicated that the "new station" would both recreate the format and the old staff. To my knowledge Mr. Clurman never contacted anyone on the staff before or after making that "announcement" until a meeting between him and the staff was suggested and arranged by the Guild's counsel, Kristin Booth Glen.

Other than that meeting, I have not been in contact with Mr. Clurman, nor has he contacted any other member of the staff, about any "recreated" WNCN, although the press has carried many stories about his alleged plan.

A 350

Record Cataloguing

On March 13, 1974, shortly after he came to the station, Wachsmith took away the record cataloguing job from Bob Adams, who had been doing it brilliantly and devotedly for years.

I told Wachsmith that he was destroying the very life blood of the station; that there was no way to adequately program the station without an accurate catalogue, and that there was no one other than Bob qualified to do the job.

Wachsmith told me that it was costing far too much, as Bob was being paid $6.50 an hour. I was shocked at this figure but when I asked Bob about it, he explained that he was only receiving $2.25. I then confronted Wachsmith with this gross distortion and he hemmed and hawed and said he must have miscalculated.

Taking the cataloguing job from Bob was completely disastrous, especially given how perpetually understaffed the station was. We were incredibly fortunate to have someone of his skill, talent and dedication doing the work, and there was simply no one else available.

Although at one point Wachsmith indicated that my assistant, Sara Quagliatera should do the job, I explained that she already had far more work than she could handle. In fact, she never took over the cataloguing, nor did any other "full-time employee" of the station.

McDole's Departure

Although McDole began knowing nothing about classical music or the station he did eventually develop a certain pride in WNCN. As rumors of an impending format change grew stronger, he was fired.

I was called in by Dick Oppenheimer who specifically told me that Starr had "dismissed" McDole and it was general knowledge at the station that he had been fired.

Tom Bird's Departure

It is claimed that Bird was let go because his expertise lay in programming, thus overlapping mine, and making him redundant. This was not the case.

Bird began at WNCN as an account executive--i.e., a salesman--was promoted to another title, and finally to station manager. He was primarily a salesman and was no more involved in programming than any one else at the station except me.

Programming Changes

Peter Starr's letter to Buckley dated March 26 indicates that changes in programming have been attempted and failed. This is not the case.

There were no major programming changes, and scarcely any minor ones (with the exception of the syndicated programs the station let lapse), until the last two months of the

station's existence when the Afternoon Symphony program was made even broader and deeper in its coverage of the classical repertoire.

The Copeland Series

In describing the efforts he allegedly made to sell time on WNCN, Louis Mahacek includes a "presentation" he apparently made to Chock Full'O Nuts about the Peabody award-winning Aaron Copeland Series which I originated.

The inclusion of this presentation is somewhat puzzling.

First, one of the salesman, Don Waterbury, and I had made an elaborate presentation on this series to Xerox. In preparation, I prepared a cassette which was to be used in attempting to sell the series. There is no mention made of this cassette, and Mahecek, although supposedly a super-salesman can hardly be considered to have done his homework in attempting to sell this series without using the tools we had developed.

Second, in describing this as "the most prestigious series ever broadcast" one wonders why Starr and its allegedly expert salespeople made no attempt whatsoever to sell any of the other 300 special programs which were on hand when those programs were of equal quality and interest. And why, with

their apparently broad resources and vast broadcasting experience, did they not seek to syndicate and distribute those programs or any portion of them, much in the way the Karl Haas programs are sold to many stations--including non-classical ones--thus substantially increasing the revenue of the originating station.

The Alexis Weissenberg Incident

In an earlier affidavit I described a 13-week series purchased by the renowned pianist Alexis Weissenberg as illustrative of a certain kind of potentially lucrative programming which was never tapped by Starr.

In conjunction with a North American concert tour, Mr. Weissenberg bought 13 weekly hour-long programs in which he appeared, discussing musical topics with guests like Leontyne Price, and playing music. The series was called something like, "Conversations with Alexis Weissenberg," and was intended by him and his manager to provide good exposure at a relatively low cost.

Since the cost of this entire series was approximately that of a quarter page ad in the Sunday New York Times, it was deemed exceedingly good and low-priced publicity.

What I attempted to suggest in my previous affidavit was that this kind of program and approach could have been successfully pursued with many other artists. Unfortunately,

Starr would not hire a production engineer (who is crucial to any station) and so this could not be done.

In attempting to explain Starr's apparent misreading of my affidavit, Wachsmith refers to the Wisenberg (sic) incident as possibly one in which "a person who thought he had some musical talent attempted to buy time..." In fact, Alexis Weissenberg is one of the leading pianists in the world today (see collection of press clips, etc., Attachment B hereto) and Wachsmith's abysmally ignorant characterization graphically demonstrates the absolute necessity that salesmen--at least of classical music formats--must have knowledge of their product before they have any chance of selling it whatsoever.

The Starr Sales Effort

Starr claims to have made an enormous sales effort to make the station profitable, including replacing personnel from the prior management and bringing in special salespeople from other parts of their organization. While there was movement, there was no real increase in sales for a number of reasons.

Paul Wachsmith, described in superlatives in Starr's affidavits, was hardly a supersalesman or station manager. He had no qualifications for the latter position, especially for a sophisticated station with a specialized format and audience

like WNCN's. He was seldom at the station, and hardly ever there when he was really needed. He had a drinking problem and was something of a joke among people at the station. Whatever morale there was among staff came from people's real love for the music and the station, not from any inspiration provided by Wachsmith.

The sales campaign which involved people from Starr's main office was equally farcical. Each time a new person came into New York, (i.e., Mahecek, Birnbaum, Oberst, etc.), I had to explain to them what the station was all about --often they were gone again before they could possibly understand--let alone sell--what we were doing there. There appeared to be no integration in management at all, making a real sales effort impossible and making the already difficult working conditions (i.e., understaffing, lack of production engineer, etc.) even worse.

David Dubal

Sworn to before me this
7th day of April, 1975.

Kristin Booth Glen

Notary Public
KRISTIN BOOTH GLEN
Notary Public, State of New York
No. 31-9820460
Qualified in New York County
Certificate filed in New York County
Commission Expires March 30, 1976

WNCN 101.3 FM

A 356

A Starr Group Station

2 West 45th Street New York NY 10036 212/867 5171

August 22, 1974

Mr. William F. Buckley
The National Review
150 East 35th Street
New York, New York

Dear Mr. Buckley:

It has now become very apparant to all of us at WNCN, in spite of consistent lies to the contrary, that the station will soon be changing format. We are appealing to you, both as an appreciative listener and as a man of influence, regardless of how much stock you personally hold in Starr Broadcasting, to assist in the reversal of this barbaric decision. Surely, you must be aware that this goes quite beyond the issue of merely preserving a commercial station. We do not feel that a man of your cultural and intellectual posture could passively permit the destruction of the kind of cultural institution WNCN represents.

We, and our listeners, are angry and frustrated. It is absurd to think that a portion of the public, a highly sophisticated public, in the most densely populated urban area of the world, should not have the option of listening to fine, classical broadcasting twenty-four hours a day. The air waves are still a public trust. Yet, there is no reason why WNCN, with the proper kind of management, could not succeed as a commercial entity.

Our metropolitan area would not be better served with one more rock station!

This is a serious blow to concepts of freedom which you seem to advocate, namely, freedom of choice. We urgently as that you give this matter your thoughtful attention. We are at your disposal should you be able to discuss this with us.

Most respectfully yours,

David Dubal, Program Director

Sarah Quagliata, Music Director

cc: James Buckley

Exhibit J
Attachment A

America's Foremost Fine Arts Station

A 357

S. Hurok presents

Few pianists have generated as much excitement and won such universal and thunderous acclaim as Alexis Weissenberg. Each year he circles the globe for appearances in Europe, Japan and North America. His regular concerts with the great orchestras of Berlin, Chicago, Boston, Paris, New York, Philadelphia, Cleveland; his recitals at the major festivals and in the music capitals and his extensive list of recordings from Bach to Bartok for Angel and RCA have made him one of the few classical superstars of the age.

"Not since Horowitz has there been a virtuoso around who can raise an audience's blood pressure to this level—until now, that is. Weissenberg's the one."
—High Fidelity/Musical America

"Alexis Weissenberg plays the piano about as brilliantly as anyone now before the public."
—Donal Henahan, The New York Times

"He can play with more refinement than almost anyone else . . . the gradations in tone could probably have been measured in fractions of decibels. The tone was beautiful, the articulation precise."
—Raymond Ericson, The New York Times

Angel, RCA Records

Front photo: Pietro Pascuttini

Exclusive Management: **HUROK CONCERTS INC** 1370 Avenue of the Americas, New York, N.Y. 10019
West Coast: 9200 Sunset Blvd., Los Angeles, Calif. 90069
Hurok Concerts is a Division of Tomorrow Entertainment, Inc., a subsidiary of General Electric

PRINTED IN U.S.A.

Exhibit J
Attachment B

A 358

HUROK CONCERTS
1370 Avenue of the Americas • New York, N. Y. 10019

SHEILA PORTER
Director of Publicity

JOHN GINGRICH
Publicity Associate

Telephone: (212) 245-0500

Hurok Concerts is a Division of Tomorrow Entertainment, Inc.,
a subsidiary of General Electric

ALEXIS WEISSENBERG
Biography

Time Magazine recently commented on the "Horowitz-like technique, poet's heart and vast reserves of power," displayed by internationally famed pianist, Alexis Weissenberg. Born in Sofia, he began his preliminary studies in piano and composition with Pantcho Vladigerov, Bulgaria's foremost composer, and continued his musical education in the United States under the supervision of the late Olga Samaroff. In addition, the personal advice of Schnabel and, above all of Wanda Landowska, gave direction to the artistic road he chose to follow.

Despite innumerable concerts given at an early age in his native land, in Turkey, Palestine, Egypt, as well as an extensive first tour of South Africa, his career was really launched in a blaze of critical superlatives after his major debut at Carnegie Hall as soloist with the New York Philharmonic under the direction of George Szell, as winner of the 1948 Leventritt International Award. That same year, the pianist made his Philadelphia debut with the Philadelphia Orchestra and Eugene Ormandy.

Weissenberg proceeded to tour coast to coast in the United States and throughout the entire world, performing both in recitals and with orchestras under the great conductors.

Despite the success he enjoyed, Weissenberg abandoned the concert stage for a number of seasons for what he calls his "second formulative period," during which time he lived in Madrid and Paris, devoting himself to study, practice and rediscovery. He ended his retirement in a dramatic fashion with a season-opening appearance with the Berlin Philharmonic under Herbert von Karajan in 1966. In February, 1967 he made a triumphant return to the United States in four New York Philharmonic subscription concerts performing Rachmaninoff's Third Piano Concerto.

(more)

His last seven seasons have been even more successful than the pre-sabbatical career, with a schedule more crowded than ever. Each season he tours the United States, playing with the major orchestras and in many recitals.

During the 1968-69 season he appeared at the Osaka Festival and other Japanese cities and was immediately booked for Expo '70. He has since devoted part of his busy schedule to annual tours of Japan and the Far East.

The eclectic musical interests and enthusiasms of this artist have made possible a wide-ranged repertoire, embracing as it does such diverse works as the Brahms and Rachmaninoff Piano Concerti or Bartok. Or, for example, Stravinsky's "Petrouchka Suite for Piano" and Bach's "Goldberg Variations," which have received the highest critical acclaim. Weissenberg's Chopin or Schumann recitals are viewed as major events and his interpretations are placed in the category of the true and great Romantic specialists of the day.

Weissenberg's 1974-75 schedule takes him to such international summer festivals as Ravinia, Tanglewood, Edinburgh and Salzburg and his four-month American tour includes appearances with the Boston Symphony and the Cleveland Orchestra, both in their own cities and at Carnegie Hall, as well as the Detroit Symphony Orchestra, the Pittsburgh Symphony Orchestra and the Minnesota Orchestra.

He also makes his second film with the Berlin Philharmonic and Herbert von Karajan and stars in a feature-length film biography of Sergei Rachmaninoff.

Over the last six years Weissenberg has made thirty recordings on the Angel and RCA labels, including the complete works for piano and orchestra of Chopin. This season he completes his latest project for Angel: the complete Beethoven concerti with Herbert von Karajan and the Berlin Philharmonic.

#

May, 1974

A 360

THE NEW YORK TIMES, FRIDAY, DECEMBER 4, 1970

Weissenberg Performs Prodigies in Piano Recital

Clarity of Articulation Especially Noted

ALEXIS WEISSENBERG, piano. At Philharmonic Hall.

Partita No. 4 ..... Bach
Symphonic Etudes ..... Schumann
Sonata No. 3 in B minor ..... Chopin

By HAROLD C. SCHONBERG

Some of the interesting things about Alexis Weissenberg's piano recital, in Philharmonic Hall on Wednesday evening, were things he did not do. Ever since the late nineteen-forties, when he won the Leventritt Competition and started to concertize, there has never been any doubt about this man's ability to play the piano. But often his ideas about interpretation could leave one stunned. There was so much pulling-about, so much distortion of phrase, that one felt like screaming. So much talent, such a waste!

●

There was none of that at the Wednesday concert. Mr. Weissenberg has grown up. His playing not only was accurate; it was downright literal, with every marking observed, every repeat in every piece taken, every tempo within orthodox bounds. If there were occasional rubato effects or other expressive devices, they were discreetly applied. Nobody could take the least exception to the musicianship of the pianist.

As far as sheer pianism is concerned, Mr. Weissenberg is pretty much in a class by himself. He has Horowitz fingers.

But how he plays! There is something almost spooky in seeing his slight, immobile figure performing such prodigies. The Bach D major Partita, for which Mr. Weissenberg purposely adopted a non-legato touch, unrolled with the inevitability of figures streaming from a computer. The clarity of his articulation was amazing, as was the evenness of his trills. Mr. Weissenberg's rhythm, too, kept the music in steady motion. This was an objective, antiromantic kind of performance, with the pianist interested in pattern and sequence more than expression. Of its kind, it was spectacular.

Alexis Weissenberg

●

Not only did Mr. Weissenberg take all the repeats in the Schumann Symphonic Etudes, but also he played all five of the posthumously published variations. This was not an entire kindness to the composer. The first three of those variations are rather weak (though the last two are of extreme beauty), and Schumann had good reason for not having them published. Including all five in addition strings out the work a little too long.

The music did not receive a very poetic interpretation. Rather, this was a performance of strength, with emphasis on finger clarity. It did have power and dignity, and one could only sit and marvel as the imperturbable Mr. Weissenberg swept over the keyboard, his steel wrists refusing to become tired. Anybody who can play the piano with this kind of finish deserves respect. Applications of color would have been welcome, and would have turned this fine performance into a great one. But better this kind of direct, driving, flawless and honest playing than some of the tricks Mr. Weissenberg used to feature in an attempt to interpret.

It was in the Chopin B minor Sonata that Mr. Weissenberg was supreme. It also was in the slow movement of this work that he brought a degree of poetry and tonal nuance that showed the direction in which he is heading. Here, for once, imagination was coupled to Mr. Weissenberg's infinite pianistic resource. The last movement was a series of tonal bullets that shot through the hall and pierced everybody. Something is happening to Mr. Weissenberg, something very agreeable. If he continues to progress in this manner, he will soon be the joy of the public and the despair of his colleagues.

Playing Is Supreme in a Chopin Sonata

S. HUROK

presents

Alexis

Weissenberg

Exclusive Management:
HUROK CONCERTS, INC., 730 Fifth Ave., New York, N.Y. 10019
West Coast: 8255 Sunset Blvd., Los Angeles, Calif., 90046

DAILY NEWS, WEDNESDAY, DECEMBER 2, 1970

ONLY HUMAN

The Gamble Pays Off

By SIDNEY FIELDS

At 19, Alexis Weissenberg held a few of the big promising marbles as a concert pianist. But he suddenly gave them up, taking the big gamble that he wouldn't be able to return.

"At 19, no one is fully professional," he explained before a concert recently. "I didn't want to remain a promising young pianist at the age of 50."

He won the gamble and is fulfilling all his promise.

Tonight he will display his power and passion on the piano at Philharmonic Hall with a Bach Partita, Schumann's Symphonic Etudes and a Chopin Sonata. Next Jan. 4, he'll be the soloist with the Philadelphia Orchestra at Philharmonic Hall with Brahm's 2d Piano Concerto and a week or so later will be back again at the Hall playing Ravel's Concerto for a Salvation Army benefit.

"All fat cathedral pieces," said Alexis, slight, compact, 41, a sharp mod dresser. He wore a turtleneck and a brown suede coat and flared slacks to match.

Daughters Normally Musical

His home is in Paris, an apartment on the left bank of the Seine opposite the Louvre. Personally and professionally he is an ubiquitous man. His parents are divorced; his father lives in Montreal, his mother in Mexico. He is divorced and his wife and two daughters live in Madrid. He's devoted to his parents and his children and spends his free time with them.

"My daughters are beautiful and intelligent and normally musical," said Alexis, "which means no tantrums, no nervous tics and no future delusions of persecution or greatness."

He's a French citizen, but was born in Sofia, Bulgaria, where he was taught by a well-known pedagogue named Pancho Wladigeroff. (Alexis swears that there are several men named Pancho in Bulgaria.) He and his mother survived two occupations, German and Russian.

"What was left by the Germans, the Russians took," he said. "We managed to cross the border in 1945, but the Germans kept us in a camp for six months. One night we walked out and got on a train to Turkey and then made our way to what was then Palestine."

They needed money, so he went to see the manager of the local Philharmonic, told him he wanted to play for him, but was asked to return in five years. Alexis told the man he needed the money now. He was about 15. He played for the man and spent the next three seasons with the orchestra.

"But it was obvious to both of us that I still had to study," Alexis said.

Between seasons he toured in South Africa, then came here in 1947 to enroll at Juilliard and got a degree. His teacher was Olga Samaroff, whom he worshipped.

"Her real name was Lucy Hickenlooper," Alexis recalled. "She was one of the early wives of Leopold Stokes, better known as Stokowski. When they were married he told her, honey chile, you can't be in music as Lucy Hickenlooper. So she became Olga Samaroff."

Alexis Weissenberg—Power on the piano.

She urged him into the big competitions. The first prize he went after was the Naumberg. Two minutes after he began playing for the judges he was dismissed. But he won the plum of them all, the Leventritt award and then took the Philadelphia Youth competition. He wasn't quite 19. It gave him the golden chance to play with the N.Y. Philharmonic and the Philadelphia orchestra and to tour the country as a major attraction with major orchestras.

Studied for 10 More Years

"But I still felt too young for all this," he said. "I cut the concerts to less than 10 a year and chose only those that prepared me for my career. The next 10 years were spent almost entirely in studying."

His return had to be timed perfectly. It could not be fabricated. And the right moment had to have the right conductor because the conductor is the most knowledgeable one musically and best equipped to sense and understand the musician. The conductor for Alexis was Herbert von Karajan of the Berlin Philharmonic and the way they met was pure chance.

Von Karajan was looking for a cameraman to film a performance of the Tchaikovsky Piano Concerto and went after an assistant to Ingemar Bergman, a man named Falk. As a sample of Falk's work von Karajan watched a film of Stravinsky's Petrouchka. He was so impressed, he hired both Falk and the soloist. The soloist was Alexis.

"We made the Tchaikovsky film together and we opened the 1968 season in Berlin with the same concerto," said Alexis. "He brought me to New York with him the following February."

Alexis hasn't stopped since.

State of New York)
: ss.:
County of New York)

ARNOLD LABATON, being duly sworn, deposes and says:

I am Director of New York City's Municipal Broadcasting System, which operates WNYC-FM. I have been asked to provide a summary of my actions and discussions regarding the disposition of WNCN's classical music record library.

On August 28, 1974 I learned from an article in the New York Times (Attachment A hereto) that station WNCN-FM would be changing its format on October 5th. The article reported that Mr. William F. Buckley, Chairman of Starr Broadcasting, the owners of WNCN, had stated that he would recommend turning over WNCN's record collection to a non-commercial station "committed to the classical formula." Richard Pyatt, the program manager of WNYC-AM, called Mr. Peter Starr to express WNYC's interest in receiving the record library and Mr. Starr suggested we meet with him and Mr. William Buckley to discuss this matter on September 5th. In a letter to Mr. Starr dated August 30, 1974 (Attachment B hereto) I confirmed our interest in the record library and confirmed that we would attend the September 5th meeting.

EXHIBIT L

The meeting took place on September 5, 1974, and Mr. Pyatt and I attended on behalf of WNYC. Mr. Starr and Mr. Buckley represented WNCN and representatives of WBAI and WFUV were also present.

At the meeting Mr. Buckley set forth a number of conditions being sought in return for the WNCN record library and some financial compensation. The conditions included a 24-hour classical music format and the employment of several members of the WNCN staff for two years. I believe I said to Messrs. Starr and Buckley that my initial reaction was that it would be inappropriate for WNYC-FM, which is a municipally operated station, to broadcast only classical music, that we were interested in obtaining the WNCN record library and would in the near future make a counter proposal to Starr Broadcasting.

At the meeting the representatives of both WBAI and WFUV also stated that they did not think they would be able to meet all of the conditions which Mr. Buckley had announced, but that they too would think about it and make counter proposals to expand their classical music programming if awarded the WNCN library.

On September 11 I read in an article in the Times (Attachment C hereto) that Mr. Buckley had designated a committee to determine which station would receive the WNCN record library and the pledges which Mr. Buckley's campaign had generated. Mr. Richard Clurman

became the chairman of that committee. Some time later, Mr. Clurman called me and I believe I told him that we had decided we could not adopt a 24-hour classical music format but that we intended to make a proposal for consideration by his committee and Mr. Buckley.

On September 25, 1974 Matt Biberfeld, WNYC-FM Program Manager and I met with Mr. Clurman, Mr. Buckley and others and made a proposal. The proposal was confirmed in writing on September 30, 1974 (Attachment D hereto) and speaks for itself.

Subsequent to the submission of the written proposal I had one or more brief telephone conve sations with Mr. Clurman, but there were no further discussions, proposals or counter-proposals of any substance.

On January 30, 1975 The New York Times carried an article (Attachment E hereto) to the effect that the Municipal Broadcasting System might be forced by austerity measures to curtail WNYC-FM's classical music broadcasting between midnight and 6 a.m., as well as certain other services. A few days later, I received a telephone call from Kristin Booth Glen, counsel for WNCN Listeners' Guild. She expressed concern over the possible loss of our all-night classical music program and offered whatever help the Listeners' Guild could give to avoid that loss. Fortunately, it has not been necessary for us to curtail our broadcasting schedule in this way.

Arnold Labaton

Sworn to before me this
7th day of April, 1975

Notary Public

THE NEW YORK TIMES, WEDNESDAY, AUGUST 28, 1974

A 365

WNCN WILL DROP CLASSICAL MUSIC

Station, Losing Money, to Switch to Popular Tunes

By ALLEN HUGHES

WNCN, which has attracted an intensely loyal audience in the metropolitan area with its classical music programs since 1957, will become a popular-music station on Oct. 5.

The impending change of format was reported yesterday afternoon by William F. Buckley Jr., chairman of the Starr Broadcasting Group, which has owned WNCN since May, 1973. Mr. Buckley said that during the last 18 months WNCN's income had not been sufficient to pay expenses.

Calling the decision to change WNCN's format "a disappointment both professional and personal," Mr. Buckley said, "I have no intention whatever of listening to it ever under the new format."

Mr. Buckley said he would recommend that Starr Broadcasting arrange to turn over WNCN's $750,000 collection of recordings to a radio station "committed to the classical formula," preferably a noncommercial station that "could furnish music without a commercial interruption."

Long a Favorite

Founded in 1957 by The Concert Network, WNCN has long been a favorite of good-music listeners. Its programs, which for the last seven years have been prepared under the direction of David Dubal, have explored the classical repertory in depth and have included special year-long contemporary series with composers such as Virgil Thomson and Aaron Copland as hosts.

In 1964, WNCN was purchased by L. W. Froelich and made a part of his National Science Network. Following his death a few years ago, WNCN and the National Science Network stations of Chicago and Pasadena (Calif.) were sold.

The Starr Broadcasting Group, which bought WNCN, owns 15 radio and television stations across the country. Its headquarters are in New Orleans, and Peter H. Starr is president of the company. Last week, although Mr. Starr denied that any change of format was forthcoming, he acknowledged that the company was planning to change the call letters of WNCN to WQIV if the Federal Communications Commission approved.

With the demise of WNCN as a classical-music station, the principal classical-music stations in New York will be WQXR, WFUV, WNYC-FM and WKCR-FM.

In his statement announcing the change of format, Mr. Buckley noted that Starr Broadcasting had paid $2-million for the station and that "as things now stand, WNCN is not even earning the interest cost on the capital invested.

"As chairman of the board and a minority stockholder I cannot dictate the format of a New York City radio station for my personal convenience," Mr. Buckley said.

"The decision of management is, for me, a disappointment both professional and personal. I had hoped, along with the other directors, that the classical format could sustain the station and justify the investment," he said.

'Magnificent Music'

"Besides this, I have for many years been a listener of WNCN, which has played the most magnificent music ever written. In fact, it is the only station I regularly listen to. I would like to be in a position to dictate to a station its programming schedule for my exclusive benefit, but that is not the way things are. I have no intention whatever of listening to it ever under the new format."

Regarding his proposed recommendation for the disposition of WNCN's vast record collection, Mr. Buckley said, "I would especially recommend that we look favorably on an application from a noncommercial station, of which there are several in New York City, which could furnish music without commercial interruption."

Mr. Buckley said that the new WNCN format would involve "popular music, of some sort or other." It is assumed by present WNCN staff members, most of whom stand to lose their jobs, that the "popular music" will be rock.

As of yesterday afternoon, the WNCN staff had still not been told by management that the format change was to take place, but on Monday, Larry Miller, program director of KUDL, a Starr-owned progressive rock station in Kansas City, visited the WNCN studios and offices at 2 West 45th Street. Present staff members expect him to be named program director for the new format.

ATTACHMENT A

The City of New York
MUNICIPAL SERVICE ADMINISTRATION
MUNICIPAL BROADCASTING SYSTEM
2500 MUNICIPAL BUILDING, NEW YORK, N.Y. 10007

August 30, 1974

A 366

Mr. Peter Starr
Starr Broadcasting Group
3715 Williams Boulevard
Tenner, LA 70062

Dear Mr. Starr:

Richard Pyatt has informed me of his conversation with you yesterday. We are greatly looking forward to meeting with you and Mr. Buckley on September 5 to discuss the possibility of the Municipal Broadcasting System's acquiring WNCN's classical music record collection.

Although WNCN is one of our main competitors in providing classical music programming and we are sympathetic to the station's financial plight, we deeply regret its departure from the classical music format. However, the New York community is fortunate in having other radio stations which provide classical music programs.

WNYC-FM is a 50KW non-commercial radio station transmitting 24 hours per day from the Empire State Building. It provides a very good signal capable of being received well throughout the New York metropolitan market. Because of our capability of reaching all listeners in this area with a good signal, the Starr Broadcasting Group would be providing a notable public service were it to donate to the Municipal Broadcasting System its fine collection of classical music recordings.

We have been broadcasting classical music for over forty-five years and will continue to do so in the future. The addition of your library to our own would greatly expand our range of programs and would be a real boon to classical music devotees in this area.

RECEIVED
SEP 3 1974
STARR

ATTACHMENT B

A 367

We look forward to discussing this further at our meeting on September 5th.

Cordially yours,

Arnold Labaton
Director

A 368

THE NEW YORK TIMES, WEDNESDAY, SEPTEMBER 11, 1974

PANEL IS NAMED IN WNCN SWITCH

Will Pick Station to Receive Classical Disks and Cash

By MICHAEL T. KAUFMAN

William F. Buckley Jr., the columnist, has designated a committee of prominent citizens to determine which of three radio stations might receive the records, the format and some $500,000 in pledges contributed to FM radio station WNCN.

The station is owned by the Starr Broadcasting Group, of which Mr. Buckley is chairman. Starr's management has announced that the station will scuttle its 24-hour-a-day classical music format Oct. 5 and go to an all-pop schedule.

But Mr. Buckley, as a listener of the station, says its musical offerings are very important to the city. So, while not taking issue with management's decision, which he said was based on "paying the bank," Mr. Buckley has been trying to have WNCN's programing absorbed by a noncommercial station.

To induce one of the stations considered — WBAI, WNYC and WBAI — to take on the programing, Mr. Buckley has appealed to WNCN listeners to contribe pledges of yearly donations. So far $420,000 has been promised. In addition, Mr. Buckley said that the Merlin Foundation had promised $100,000 in cash. He said that he did not know who had set up the foundation.

As envisioned by Mr. Buckley, the money and pledges would go to the station that takes over the format and agrees to keep the current WNCN staff for the next two years.

Each of the stations has said that there are problems involved in any switch of the format. Mr. Buckley said however, that none are insurmountable.

In appealing to the citizen's group, Mr. Buckley said he had proposed to give it "full authority to dispose of assets."

Of the nine designated, Leonard Bernstein, the conductor, and Harold C. Schonberg, music critic of The New York Times, said they could not serve. Six agreed to serve. They are Richard Clurman, president of the City Center; Schuyler G. Chapin, general manager of the Metropolitan Opera; Dr. Frank Stanton, former vice chairman CBS Inc.; David J. Oppenheim, dean of New York University; Dixon Palmer, a lawyer representing the anonymous principals behind the Merlin Foundation, and Theodore C. Sorensen, the lawyer. The ninth designee, Carlos Mosley, president of the New York Philharmonic, is in Japan with the orchestra and has not responded.

Irving Lewis, a director of the American Federation of Television and Radio Artists, said he could not forsee any way in which WNCN would waive its obligations to the stations for full-time announcers, who receive a base weekly salary of $272.75. He said he did not think that WBAI and WFUV, nonunion stations, would take on the staff.

Mr. Buckley said he had not given thought to the union problem. He agreed that the station would obtain a tax write-off for a legitimate gift, but he said his sole motive was to "preserve music, which is very important to the New York community."

ATTACHMENT C

A 369

September 30, 1974

Mr. Richard Clurman
Time-Life
Room 1969
Time-Life Building
50th Street & 6th Ave.
New York, NY

Dear Mr. Clurman:

Following is the substance of the offer we presented to WNCN in regard to the transfer of its personnel, music library and index when WNCN changes its broadcast format. Although this is a counter-proposal from WNYC-FM, should it be acceptable to WNCN, it would still require the approval of the government of N. York City. To this extent the counter-offer must be made contingent on that approval and the working out of acceptable administrative arrangements.

As we have stated previously, we truly regret WNCN's format change and the loss of such an important outlet for classical music in this city.

WNYC-FM has for many years given a considerable portion of its broadcast schedule to the presentation of classical music. In our present schedule, approximately fourteen hours per day are devoted to classical music. Should there be a severe curtailment in the amount of classical music available on FM radio in this market, we would adjust our schedule to provide what redress we responsibly can.

WNCN has prepared to turn over to a station with which it could make a mutually satisfactory agreement, its record collection and index, $100,000 from the Berlin Foundation, and its physical approximating $500,000. In return, the recipient station would agree to program classical music and retain three or four designated WNCN staff members for two years. In addition, a station accepting the WNCN proposal would have its performance reviewed after a period of two years to ascertain whether it had met its promise of performance.

ATTACHMENT D

A 370

WNYC-FM proposes to expand its schedule of classical music programming to approximately seventeen hours per day: weekdays from 9:00 am to 5:00pm, 6:30 to 8:30 pm and midnight to 7:00 am; weekends from 9:00 am to 4:00 pm, 6:00-10:00 pm and midnight to 7:00 am. Some of the remaining hours will also be devoted to classical music and opera (throughout this letter, we intend classical music to include opera).

Many of the hours specified above as well as the remaining hours will be given to the presentation of live concerts - as we've done in the past and will continue in the future.

In some of the hours devoted to classical music, we will include news broadcasts and cultural features such as reviews, interviews and coming events. It is hoped that such talk segments will not exceed five minutes in length each; and maybe one or more talk segments in each of the hours devoted to classical music.

Although we plan to adhere generally to the schedule laid out above, we are compelled to add that we will not hesitate to preempt the regularly scheduled programming at our discretion. The criterion for calculating the number of hours devoted to classical music is determined by the number of hours scheduled for classical music. The number of minutes devoted to news broadcasts, cultural broadcasts or preemptions shall not be considered to diminish the seventeen hours per day being scheduled for classical music.

Regarding WNCN's personnel, we would require the receipt of funds from WNCN in advance sufficient to fully compensate them over the two year period, including salary plus fringe benefits. City regulations would appear to preclude their being compensated from city monies.

We are advised that the proposed condition of subsequent review would be found unacceptable by the City of New York. In order for the city to agree to any transfer of money and personnel the offer must be in the form of an unconditional gift.

Should this counter-proposal be acceptable to Starr Broadcasting, we would be pleased to attempt to complete the necessary arrangements to bring it to fruition. If you have any questions, please do not hesitate to contact me.

Thank you for all your efforts.

Sincerely yours,

Arnold Labaton
Director

Municipal Stations Fear Cutback in Staffs and Fare

The city's Muncipal Broadcasting System said yesterday that austerity measures might force it to curtail broadcasts on WNYC-FM radio between midnight and 6 A.M. and to cut back service on the other city-owned stations, WNYC-TV/Channel 31, and WNYC-AM radio.

WNYC-FM devotes most of its 24-hour programing to classical music. Since the demise of classical-music station WNCN last year, it is one of the few remaining radio outlets for classical fare in the metropolitan area.

Arnold Labaton, director of communications service for the Municipal Broadcasting System, said the main problem was a lack of manpower at the three city stations.

Since last July the broadcasting system has lost about 30 staff members because of a hiring freeze, the removal of provisional employes and the elimination of a Model Cities Program that had provided the system with 13 minority member employes, Mr. Labaton said.

He added that he had received no official word, but that newspaper accounts made him think that Mayor Beame would announce further personnel cutbacks tomorrow that will include the city's broadcasting system.

Many of the 135 employes now working for M.B.S. are performing more than one job, Mr. Labaton said, and with regular vacation periods coming up, there will be a problem maintaining adequate service.

Depending upon the extent of any further staff reductions, the broadcasting system is also considering eliminating live radio broadcasts of classical music concerts, a service that has already been reduced since July.

Personnel cutbacks have also resulted in a curtailment of plans to develop classical music programs on WNYC-FM for the former listeners of WNCN, he said.

Other options open to the system are the elimination of the "Masterwork Bulletin," a bimonthly program guide, reduction of the number of locally produced shows, and the curtailment of live coverage of local public events and hearings.

There would probably be no change in the number of hours that WNYC-AM is on the air since that station normally ends its broadcast day at 10 P.M., Mr. Labaton said. However, he said, the station might not be able to produce as many public affairs and information shows in the future and any curtailment of this fare would mean a heavier reliance on recorded music shows.

Mr. Labaton said that on WNYC-TV such shows as "Cityscope" and "City Connection," programs geared to New York City, might be eliminated if manpower is drastically reduced.

The city stations will continue to carry programs from the Public Broadcasting Service and from National Public Radio.

Mr. Labaton said that if the WNYC-FM broadcast day is made any shorter, the station might be in jeopardy of losing funds from the Corporation for Public Broadcasting, which requires stations receiving funds to broadcast a minimum number of hours every day.

The Municipal Broadcast System also maintains a Civil Defense radio hookup, a radio and television transmitter, and public address systems for the City Council, the Board of Estimate, the courts and for public events. The last service may also have to be reduced.

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ATTACHMENT E

State of New York)
: ss.:
County of New York)

LAWRENCE J MAROTTA, being duly sworn, deposes and says:

I was the Program Director of WFUV-FM, New York, from May 1974 to January 1975. WFUV is an educational station operated by Fordham University.

In September 1974, WFUV was one of the stations which responded to Mr. William F. Buckley's appeal for a noncommercial station to take over WNCN's classical music format. I played a substantial role in formulating WFUV's response and am fully familiar with WFUV's dealings in September and October 1974 with Mr. Buckley and with the "Save WNCN" committee headed by Mr. Richard Clurman.

WFUV's position from the outset was that both technical problems (relating to studio and antenna facilities) and commitments to its existing audience made it impossible to convert to 24-hour classical music broadcasting on the terms proposed by Mr. Buckley, but that WFUV would be prepared to expand its classical music broadcasting significantly. This position was communicated to Mr. Buckley on September 5, 1974, both by letter from James C. Finlay, S.J., Fordham's Presi-

EXHIBIT M

dent, and orally by Joseph Camerasano, Executive Vice-President of Fordham, at a meeting with Mr. Buckley and representatives of two other stations. An article reporting the WFUV proposal and the September 5th meeting which appeared in The New York Times on September 6, 1974 is attached as Annex A hereto.

WFUV's inability to accept certain of the conditions laid down by Mr. Buckley was confirmed in a subsequent letter from President Finlay to Mr. Buckley.

Later in September, WFUV prepared a written proposal, setting forth in detail how it would expand its classical music programming if awarded the WNCN record library. A copy of the proposal is attached as Annex B hereto. The proposal contemplated having Starr Broadcasting (or a foundation or other entity organized by Starr) produce the additional programs which WFUV would broadcast, so that WFUV would neither bear the financial burden of employing the WNCN staff, nor receive the benefit of the pledges which Mr. Buckley's campaign had generated. The proposal also made clear that WFUV's commitment to expand its classical music programming meant utilizing the WNCN format, and not, for example, the vastly different type of classical programming found on WQXR, which features mainly short selec-

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tions and "top 40 classical" works.

On September 25, 1974 a copy of the WFUV proposal was hand-delivered to Mr. Buckley, together with a letter from President Finlay, asking that Mr. Buckley bring the proposal to the attention of the committee, which by that time Mr. Buckley had appointed and which had chosen Mr. Clurman as its chairman. A copy of President Finlay's letter is attached as Annex C hereto.

Six days later, I made the WFUV proposal available to Les Brown of The New York Times and to several other reporters, and the next day, October 2, 1974, the Times carried a story, a copy of which is attached as Annex D hereto. I had assumed that our proposal was by that time under active consideration by the Clurman committee, and I was, therefore, quite surprised to learn from the Times article that Mr. Clurman was unaware of the WFUV proposal. Mr. Clurman called me that morning and, at his request, I had a copy of the proposal hand-delivered to him that day. A copy of my letter to Mr. Clurman, dated October 2, 1974, is attached as Annex E hereto.

Two days later, on October 4, 1974, I learned from an article in the Times that Mr. Clurman's committee was "still considering" our proposal, but that the committee was not then making any recommendation to Starr, pending

exploration of other possible "solutions." A copy of this article is attached as Annex F hereto. It was later that day that the Court of Appeals temporarily stayed WNCN's format change. Throughout the duration of the stay, WFUV heard nothing from either Mr. Buckley or Mr. Clurman and, once the Court ended the stay, Mr. Clurman stated that in light of the Court's order his committee would make no further recommendations until WNCN's fate was decided. The Times reported Mr. Clurman's remarks on October 26, 1974, and a copy of that article is attached as Annex G hereto.

Throughout the period of September and October 1974, when these events were taking place, I and others on the staff of WFUV felt that neither Mr. Buckley and Starr, nor Mr. Clurman and his committee were making a serious effort to encourage proposals or to follow up on those which had already been made. They seemed all too satisfied to state that the proposals they had received were insufficient, without really taking any steps to seek, or to negotiate for, improvements in them.

For example, neither Mr. Buckley nor Mr. Clurman ever explored with WFUV whether and how the proposal we had made could have been improved from their point of view, nor whether WFUV and one or more other stations might have

jointly been able substantially to satisfy Mr. Buckley's conditions.

It must have been apparent to Mr. Buckley and Mr. Clurman very early on that it would not be possible to find a single station which was prepared to meet all of Mr. Buckley's conditions. Nevertheless, they continued to insist on those conditions, and this caused me to have serious doubts as to the sincerity of their efforts to preserve the WNCN format. My doubts were underscored by the shocking failure of Mr. Buckley to transmit the WFUV proposal to the Clurman committee, while going ahead with plans to remove the WNCN format from the air in a matter of days.

WFUV made a substantial proposal, consistent with its long history of service to the New York listening audience, and I regret that it was seemingly never regarded seriously by Mr. Buckley and the committee he appointed.

Lawrence J. Marotta

Lawrence J. Marotta

Sworn to before me this
2nd day of April, 1975

Notary Public

HELEN KRIEG
Notary Public, State of New York
No. 41-2202750 - Queens County
Certificate Filed in New York County
Term Expires March 30, 1977

WNCN Would Help Put Fine Music on Another Station

By ALLEN HUGHES

The Starr Broadcasting Group made public yesterday a plan under which the classical-music programing of its radio station WNCN-FM could be continued on another station.

Under its plan, Starr would turn over the WNCN record collection plus $100,000 a year in pledges of public support and an immediate cash payment of $100,000 from the Merlin Foundation to any local noncommercial station that agreed to adopt a 24-hour-a-day classical-music format and to employ the WNCN classical-music staff for two years.

The offer was made at a luncheon meeting attended by William F. Buckley Jr. and Peter Starr of Starr Broadcasting and representatives of stations WNYC, WBAI and WFUV. Mr. Buckley is chairman of Starr, and Mr. Starr is president of the New Orleans-based company.

Although spokesmen for the three stations to whom the offer was made indicated late yesterday afternon that full acceptance of Starr's terms would be impossible, each station retains a continuing interest in the offer, and counter-proposals are being considered.

Starr Broadcasting, which bought WNCN in May, 1973, disclosed last week through Mr. Buckley that it would change the station's classical-music format to one devoted to pop music beginning Oct. 5. Mr. Buckley said that the station was losing money with the classical format. Other stations have been successful financially broadcasting rock music, which allows more frequent interuptions for commercials.

Mr. Buckley said WNCN's impending change of format was "a disappointment both professional and personal" and that he had no intention whatever of listening to the station under the new format. After mentioning the station's financial problems, he said, "As chairman of the board and a minority stockholder I cannot dictate the format of a New York City radio station for my personal convenience."

News that the 17-year-old classical-music station would be changed aroused strong public reaction, which, within a week, has been channeled into a vigorous "Save WNCN" campaign. As of late yesterday afternoon, the campaign had brought about 13,000 letters to WNCN and pledges of future annual support of approximately $250,000 for a noncommercial version of the station.

It was this response and the current total of the pledges that led Mr. Buckley to estimate that $400,000 in annual pledges would be forthcoming. Starr Broadcasting estimates that it would cost $350,000 to operate WNCN as a noncommercial station.

Offer Not Restricted

Although representatives of only three stations conferred with Mr. Buckley and Mr. Starr yesterday, it was understood that the offer was not restricted to them, and Mr. Buckley said after the lunch that he expected other stations to show interest now that the terms of the proposal had been disclosed.

Arnold Labaton, director of New York's Municipal Broadcasting System, which operates WNYC-AM and WNYC-FM, expressed lively interest in "the quality of the WNCN record collection and its index" but said: "I don't quite think it appropriate to make WNYC-FM a 24-hour classical-music station. Among other things, we would have to eliminate other cultural programs, including 'The Spoken Word' and arts discussion programs. Presumably we will make a decision within two weeks."

Since WNYC-FM's programing schedule allows for about 14 hours a day of classical music, there would still be a considerable net loss of classical music on radio in this area if the station accepted the offer in its entirety.

New Terms Sought

Edward Goodman, president of the Pacifica Foundation, the parent body of WBAI, told Mr. Buckley and Mr. Starr that WBAI could not meet their conditions.

"But," Mr. Goodman said later, "I hope they will modify their terms. We're going to present a counter-proposal." Mr. Goodman said that proposal would not be ready until after Pacifica's national meeting Sept. 20 in Houston.

"We are substantially eclectic in our programing now," Mr. Goodman said, "but since we had begun to re-examine our program policy about two months before the WNCN announcement came, we were especially interested in it."

Lawrence Marotta, manager of WFUV, the Fordham University station, did not attend the luncheon yesterday, but he was familiar with the terms of the offer, which had been discussed by the Starr officials and Joseph Camerasano, executive vice president of Fordham.

Proposal by WFUV

"We have too many listener commitments to go that far," Mr. Marotta said of the requirements set forth by Starr Broadcasting. "We have, however, already sent a proposal to Mr. Buckley under which we would expand our classical-music programing considerably if we could get the record collection."

WFUV's daily broadcasts run from 4:30 P.M. to 1 A.M. It has somewhat longer hours on weekends. Mr. Marotta indicated that the station would extend its broadcast hours if its proposal to WNCN were accepted.

WFUV is the one station of the three that would have to strengthen its signal to qualify for Starr Broadcasting's offer. Mr. Buckley said, however, that this would not be a complicated matter to resolve.

One condition of the offer made yesterday was that the gift of the record collection would be provisional for two years. At the end of that period, a committee of three would report on the operation of the new station and, if it was found to be acceptable, the gift would become final. Mr. Buckley indicated that he would be a regular listener of the new classical-music outlet, saying, "I propose to be one of the committee of three."

Apart from WNCN and WNYC-FM, the other New York stations with major classical-music program commitments are WKCR-FM, WQXR and WFUV.

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A 378

WFUV PROPOSAL

WFUV has an effective radiated power of 50,000 WATTS, and a service area which includes substantial parts of three states. As a non-commercial, educational station with these facilities, we recognize our responsibility to continue and expand our diligent efforts to serve the community.

When the rumors first began, we appreciated the fact that the loss of WNCN would create a terrible void in many New Yorkers' daily lives. With this in mind, we began to make plans to expand and enrich our classical music service.

Of course, this is in addition to our long-established tradition of fine classical programming presented by Fordham University Radio since 1947. As an educational operation, we also recognize our responsibility to produce a diverse program service to the community, including numerous presentations of public affairs, news, information, instruction and community affairs, along with special features serving the elderly and the handicapped.

With the loss of WNCN, our primary concern is that the listeners find a new home for the fine music they love, and that we will provide this without abandoning our program service.

WFUV is already presenting an impressive schedule of fine classical music including:

The Classical Magazine (Monday-Friday, 4 p.m. to 6 p.m.)

The Evening Concert (Monday-Thursday, 6 p.m. to 9 p.m.;
Friday, 6 p.m. to 8 p.m.)

ANNEX B

The Operaphile (Friday, 8 p.m. to 9 p.m.)

A Box at the Opera (Sunday, 6 p.m. to 9 p.m.)

The DeKoven Concert (Friday, 9 p.m. to 10 p.m.)

Music from the Bronx Museum of the Arts (Sunday, 3:30 p.m. to 5 p.m.)

We are in the process of converting to a combo operation by November. With this in mind, we propose the following additional programming to our classical music schedule:

Music through the Night (Monday-Friday, 1:05 a.m. to 6 a.m.)

Listening with Watson (Saturday-Sunday, 1:05 a.m. to 8 a.m.)

Morning Concert (Monday-Friday, 6 a.m. to 9 a.m.)

Afternoon Concert (Monday-Friday, 2 p.m. to 4 p.m.)

This service can only be presented if the following agreements can be made:

1. The proposed programs are to be produced and presented in a manner consonant with the established practices heretofore in effect at WNCN. However, the ultimate responsibility for all program material remains with WFUV.

2. WNCN will assume the responsibility of incorporating their record collection and catalogue into WFUV's record collection and catalogue at no expense to WFUV.

3. Neither WFUV nor Fordham University can or will accept any financial responsibility for the employment of Starr Broadcasting personnel connected with the terms of this proposal.

It should be noted that neither WFUV nor Fordham University expects any part of the Merlin Foundation Grant, or any additionally realized funds from pledges made to WNCN.

We feel that the proposed new programs, in addition to the fine classical music already presented on WFUV, would provide an outstanding service to the classical listening public. The combination of these program schedules would result in a classical music block from 2 p.m. to 9 p.m. weekdays. This would include a mid-afternoon concert plus classical music in the afternoon drive time and in the evening. In addition we would present classical music during overnight hours and morning drive time.

We believe that Starr Broadcasting is as concerned with servicing the public as is WFUV.

In view of the foregoing, we believe that WFUV is the station most capable of best serving the classical music audience in New York.

A 381

September 25, 1974

Mr. William F. Buckley, Jr.
Editor
National Review
150 East 35th Street
New York, New York 10016

Dear Mr. Buckley:

Your kind note arrived this morning.

I continue to follow the saga of WNCN as an interested listener.

My last letter to you outlined what WFUV could not do. I am enclosing a proposal, which I would ask that you bring to the attention of your committee. It details what WFUV and Fordham University can do to expand fine music broadcasting in the Metropolitan area.

Some of this we can do without assistance from Starr Broadcasting. With the resources that WNCN has at its disposal, we could implement the proposal in all its details.

With best wishes, I remain

Sincerely,

ms

James C. Finlay, S.J.

bc: Mr. Seitz
Mr. Matthews
Mr. Marotta ✓

ANNEX C

HE NEW YORK TIMES, WEDNESDAY, OCTOBER 2, 1974

Fordham Station Makes a Bid to Inherit WNCN's Concert Albums

By LES BROWN

As dozens of musicians, city officials, artists and cultural leaders marched yesterday morning in a demonstration to head off the impending demise of classical-music programing at WNCN-FM, a noncommercial FM station, WFUV, operated by Fordham University, made a bid to inherit the station's library of some 16,000 concert music albums.

In a formal proposal to the Starr Broadcasting Company, which owns WNCN, the Fordham station has offered to increase substantially its classical-music programing and to expand its broadcast schedule to a 24-hour operation. It currently broadcasts nine hours a day, beginning at 4:30 P.M.

Barring intervening action by the Federal Communications Commission or the courts, in response to various petitions that have been filed, Starr Broadcasting plans to convert WNCN to a rock-music station with new call letters of WQIV on Oct. 5. WNCN has been broadcasting concert music 24 hours a day, as a commercial station, for 17 years.

In its proposal, WFUV noted that neither it nor Fordham "expects any part" of the pledged funds from the public, which had been solicited by the Starr management to induce a noncommercial station to accept the WNCN format whole. Nor would the Fordham station accept "any financial responsibility" for the employment of WNCN announcers and other staff personnel.

William F. Buckley Jr., the columnist and publisher who is also chairman of Starr Broadcasting, had suggested initially that WNCN personnel accompany the record library and the pledges to a new station in the interest of preserving the station's present sound.

WFUV said it would program classical music from 2 P.M. to 9 P.M. on weekdays and also through the night, beginning at 1:05 A.M. In addition, it would schedule a morning concert on weekdays and a substantial music block on weekends.

However, the WFUV proposal said it would be necessary for the station, as an educational operation, to retain much of its present nonmusic service, including its public affairs and community affairs programing and its special features serving the elderly and the handicapped.

Informal Talks With WNYC

Richard M. Clurman, chairman of City Center and the designated chairman of a committee of prominent citizens that was formed to consider proposals for the WNCN assets, said yesterday he had not seen the WFUV proposal but expected that it would be introduced at the committee's meeting today.

Mr. Clurman said there had also been informal talks with WNYC-FM, the municipal station, and WRVR, a commercial station owned by the Riverside Church, on possible proposals for the WNCN music catalogue, but he added that they have only been exploratory.

"My own view, speaking just as a member of the committee, is that I haven't yet seen anything that comes close to what we hope to accomplish," Mr. Clurman said.

He said that, in any case, he would recommend to the committee that it take no action while there is "a hearing of weight" going on at the F.C.C. or in the courts, if there should be one.

Yesterday's rally outside the WNCN headquarters at 2 West 45th Street was organized by the WNCN Listeners Guild, one of the groups that has petitioned the F.C.C. to stay the change of format at the station. It lasted 90 minutes.

Patrice Munsel, Cliff Robertson, Joanne Simon and Marya Mannes were among those in the picket line, along with Councilmen Henry Stern and Carter Burden.

The New York Kammermusiker Quartet and musicians from the Metropolitan Opera orchestra, the Florida Symphony orchestra and the American Symphony Orchestra played classical music during the demonstration.

Pickets, who carried placards containing such slogans as "Beethoven Is Alive and Well and Living in New York," appealed to passers-by to write to the F.C.C. asking that the station retain its classical programing.

October 2nd, 1974

Mr. Richard M. Clurman
Suite 1969
Time-Life Building
New York, New York 10020

Dear Mr. Clurman:

Please find encloded a copy of WFUV's proposal which the President of Fordham University sent to William F. Buckley, Jr. early last week.

We are hoping that the committee finds the terms of this proposal acceptable and that it recommends to Starr Broddcasting that we be permitted to use the musical assets of WNCN to serve the listeners of fine music in New York.

Thank you very much for your time and consideration. I am anxiously awaiting word from you in the near future.

Sincerely,

Lawrence J. Marotta
Program Director

ANNEX E

THE NEW YORK TIMES, FRIDAY, OCTOBER 4, 1974

A 384

2 Groups Ask Court to Stay WNCN Format Change

By LES BROWN

Lawyers for the citizens groups protesting the change of format of WNCN-FM from classical music to rock went immediately to court yesterday when the Federal Communications Commission declined to order the Starr Broadcasting Company to stay its intended conversion of format, scheduled to take place at midnight.

On behalf of the two petitioning groups, the Listeners Guild and Classical Radio for Connecticut, the lawyers filed a request in the United States Court of Appeals for the District of Columbia for a commission had ordered a stay.

Starr Broadcasting yesterday filed a cross-appeal in the same court for permission to change the call letters of the station from WNCN to WQIV when it adopts rock programming. The

only of the call-letters change.

"One of us will be going to a Supreme Court judge tomorrow night," said Kristina Glen, the Listeners Guild lawyer, in a telephone interview yesterday afternoon.

"It is not over yet, and we are going to pursue the case to the utmost. The F.C.C. still hasn't acted on the petitions to revoke the WNCN license or gotten to the merits of the case, such as whether Starr Broadcasting acted in good faith or whether it has been manipulative and obstructionist in this whole matter."

She called the agency's decision "a boilerplate denial" and "only the first procedural skirmish."

The commission, in its statement to the two petitioning groups, explained that it was prohibited by the Federal Communications Act from either censoring broadcast matter or attempting to direct broadcasters in the selection of specific programing.

The agency upheld the principle, which it described as "well-established," that the primary responsibility for determining a station's program format rests with the licensee of the station.

In a separate action, the F.C.C.'s staff had also denied a Fairness Doctrine complaint against Starr Broadcasting that had been filed by the Listeners Guild. The complaint charged that Starr officials used the airways to promote pledges for a proposed transfer of the concert format to a noncommercial station but refused to grant air time to those who challenged the propriety and feasibility of the plan.

Proposals for Library

The Court of Appeals has been asked to review the complaint and the decision of the Commission staff that it did not constitute a violation of the Fairness Doctrine.

Meanwhile, the eight-member Advisory Committee on WNCN's Musical Assets, headed by Richard M. Clurman, chairman of the City Center, has received proposals for the WNCN classical-record library from the FM stations of Columbia University and Fordham University.

Mr. Clurman said the committee, which met Wednesday, was still considering both proposals, although it found them to fall somewhat short of the objective. The committee hopes to find a way to preserve as much of the WNCN sound as possible, elsewhere on the radio dial, and the two present proposals would represent a substantial loss of music hours, he said.

"The committee has agreed that it would be unwise to make any recommendation now until we've explored whether there are better solutions," Mr. Clurman said.

THE NEW YORK TIMES, SATURDAY, OCTOBER 26, 1974

Court Denies Bid to Stay WNCN Format Change

By SHAWN G. KENNEDY
Special to The New York Times

WASHINGTON, Oct. 25—The United States Court of Appeals today denied a motion to stay station WNCN's planned conversion from a classical to a rock format.

However, the court ordered the Starr Broadcasting Company, owner of the New York station, to take no irreversible action before the Federal Communications Commission renders a final decision in the matter.

According to a statement released by the court, the motion for the stay, sought by the WNCN Listeners' Guild, was denied because the court felt that granting it would "constitute judicial intervention at a time when deliberations of the agency are far from complete."

The F.C.C. must now determine whether the radio station may permanently change its format.

This month the court ordered a temporary stay in the case while it decided the motion. During this time WNCN was prohibited from changing the format. The station had originally planned to make the switch to pop music Oct. 5.

The Listeners' Guild had asked for the stay after the F.C.C. denied its petition to maintain the station's classical music format. Lawyers for the group have said that the F.C.C. is responsible for protecting the interest of minorities—in this case classical-music listeners—when considering changes in format.

Until the F.C.C. rules on the case, WNCN must keep its classical-music record library, although it may change its format immediately.

Richard C. Clurman, chairman of the eight-member Advisory Committee on WNCN's Musical Assets, said after the court's ruling that his group would make no further recommendations until the station's fate was decided, one way or the other.

"We were organized to make recommendations on what to do with the station's classical library," he said. "If we came up with alternatives now, we would be violating the court's order against firm plans for the record library."

Allan J. Eisenberg, vice president of WNCN, said that although the station was pleased with the court's decision to deny the stay, it will not switch to popular music now.

"We will continue to broadcast classical music for an indefinite period, and we hope that some other station will pick up the service," Mr. Eisenberg said.

Another group of WNCN listeners, the Save WNCN Committee, is not involved in the legal battle but is trying to find another outlet for the WNCN classical music library.

Lawyers for the Listeners' Guild could not be reached for comment on the court's action.

A 386

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

KRISTIN BOOTH GLEN, being duly sworn, deposes and says:

I am a founder of the WNCN Listeners' Guild and its counsel. I have made several previous affidavits, which I here reaffirm, and make this one in response to certain allegations in Starr's Opposition to Guild Petition to Deny as to which I have personal knowledge.

So-Called "Sabotage" of the Advisory Committee

Starr charges that the Guild "sabotaged" the efforts of the "Advisory Committee" to restore classical music to the New York airwaves. Nothing could be further from the truth.

At the time the Clurman committee was named, and Mr. Clurman elected Chairman, I called him to ascertain how our interests might overlap and whether there might be ways in which we could aid each other. While the Guild has always felt that the Buckley pledge campaign was a diversionary tactic, doomed by its own terms to failure, we had no reason to doubt Mr. Clurman's personal good faith.

At his invitation, on October 28, I met with him and several other people in his office. He explained that their primary focus then was on a plan whereby further pledges

EXHIBIT O

would be sought to raise approximately a million dollars, as part of the purchase price of WRVR, now owned by the Riverside Church. The "new" station would then be turned over to the educational television station (WNET, Channel 13) to be run as a commercial, not-for-profit entity. Representatives of the Church, Channel 13, and a foundation interested in buying cultural advertising were present.

I expressed the opinion that because WRVR also had a unique format--i.e., 24-hour jazz--it was entirely likely that a protest similar to the one mounted by classical music lovers would be mounted to halt such a format change--and that procedurally such a challenge would be somewhat clearer than the Guild's because it would arise in the traditional context of a license transfer application.

Since Channel 13 was in the picture, I suggested another alternative which might be possible because of their status. New York City actually has two FM Channels, WNYC and WNYE, the latter licensed to the Board of Education. At that time I believed that NYE was used far less than is the case, and suggested that the City and the Board of Education might be approached.

I also pointed out that a Newark station, WHBI was in the process of having its license revoked, and that there might be a possibility, with Commission approval, of

course, of buying that station without disenfranchising the listeners of a unique format.

After much further discussion, Mr. Clurman indicated that he would look into these possibilities, and I left the meeting.

Subsequently, on October 30, I was invited by Mr. Clurman to attend another meeting at his office, this time including Messrs. Buckley, Peter Starr and their counsel. I agreed to attend accompanied by Robert J. Shack, President of the Guild, and Jess Brodnax, its Secretary (then Vice President).

The purpose of that meeting was apparently to reaffirm the Channel 13-RVR plan (representatives of both organizations and a foundation were also present) and to ask the Guild to "come aboard" and join in that effort. We again pointed out the unique format problem, complicated (in terms of change) by the fact that the jazz format was one of particular cultural importance and appeal to the black community who could be expected to protest so significant a loss.

At no time did I or any other officer of the Guild state that we or the Guild would organize such a protest; we simply indicated (as I still believe is true) that particularly

with the publicity around the Guild's struggle, the Court of Appeals stay, etc., a legal protest was much more likely than in a city where no prior challenge had occurred, and where listeners were not aware of their rights.

There was some discussion of how serious that protest might be, with Mr. Buckley noting that we had "only held Starr up for 30 days." We then stated that it was our personal view that the Guild ought not become involved in disenfranchising the audience of another unique format, but that we would convey the request for our participation to the Board of the Listeners' Guild, and convey the Board's response to Mr. Clurman.

I then made two proposals to Messrs. Buckley and Starr, based on their representations that the only reason they were changing the format was because it was losing money.

During the course of the discussion, Mr. Buckley had indicated that a "Mr. X," the head of a large corporation was interested in buying WNCN in order to preserve the format. The Guild was also aware of another potential purchaser who was similarly committed to the format. I suggested that Starr sell the station to one or another of these prospective buyers at a price which, if approved by the Commission, would reflect their cost and reimburse them for their losses. This suggestion was immediately rejected.

I also proposed that Starr retain WNCN, that the Guild would seek to obtain advertising through offers made to it, the Guild would also undertake to make up any deficit the station might suffer either with the pledges in Buckley's possession or through benefits, appeals, etc. I indicated that we would consider guaranteeing a 10% profit on Starr's investment as part of our fund-raising committment. (At that time I did not know that Starr had no equity whatsoever in the station.) The Guild knew that this technique had been successfully used to continue the classical format on other marginal stations, such as WONO in Syracuse.

Even though WNCN's losses were given as the only reason compelling the format change, and although 10% profit is a not unreasonable figure, this offer was even more vehemently rejected. Peter Starr stated that "When Starr buys a station it expects to make a 1000% profit on it."

We expressed the opinion that this "expectation," if true, made it almost impossible to believe that Starr had intended to retain the classical format, since there was no conceivable way WNCN could "turnaround" to a 1000% profit on a two-million dollar purchase price, but there was no response to this.

We left the meeting with only the proposal that we join in a takeover of WRVR to present to our Board.

Several days later the Listeners' Guild Board met and Bob, Jess and I presented a report of what had occurred and what was proposed. After vigorous discussion, but little real debate on substance, it was determined that because of our legal and moral position of support for unique formats, and our status as a listeners' group, we could not actively aid in depriving WRVR's listeners of their unique format, but that we would also take no active part in any protest they might organize--since our "madate," as we saw it (and as our constitution expressed) was to maintain or return the classical format on WNCN by all available legal means.

I communicated this position to Mr. Clurman by phone shortly after the format was changed. To my knowledge there were no further attempts to enlist Guild aid in the RVR project, nor (until the GAF story broke in the Times) was I aware that the RVR negotiations were still active.

At several later dates, as members of the Guild had suggestions of available frequencies or other possibilities for the re-creation of the WNCN format, I communicated those suggestions directly to Mr. Clurman, or, in at least one case, had the member call Clurman himself. Obviously, none of this was part of any plan to "sabotage" the Committee's operations or goals; its failure to re-create the format cannot by the wildest stretch of imagination be laid at the Guild's door.

After reviewing Starr's Opposition, with its numerous charges of Guild "sabotage," and after receiving a letter from Mr. Buckley (Attachment A, hereto) denying the Guild access to the pledge lists, but again charging "sabotage," I determined to lay the matter to rest, once and for all.

I called Mr. Clurman and explained what charges had been made, and asked him if he believed that the Guild had ever engaged in activity which could in any way be described as "sabotage." When he answered that this had not been his experience, I asked him if he would confirm this in writing. He suggested I write him formally, which I did (Attachment B, hereto) and he, in turn, replied (Attachment C, hereto). As the Chairman of the Committee has now disavowed these unfounded charges, it is hoped that the matter will not be raised again.

Guild Efforts Re Format

It has now been claimed on numerous occasions that the Guild is simply engaged in a "vendetta" against Starr, and is really unconcerned with restoration of the classical format. This is flatly untrue.

As possibilities for a return of the format in other, legal ways occurred, the Guild vigorously pursued them. For example, when we learned that WNJR's license was being revoked, we thought it might be possible to obtain interim operating

authority from the Commission to program the classical format until a new licensee was chosen. While we knew WNJR was not a classical station, nor was it likely to become one, the New Jersey legislature and many New Jersey officials and citizens had already expressed dismay at the loss of WNCN's unique format, and we felt it might be appropriate on an interim basis while the Commission also considered our petitions.

Calls were made to various New Jersey officials to determine whether there would be any support for an application by the Guild. Washington counsel also made informal inquiries of the Commission as to the feasibility of such an application. When it was determined that interim operating authority would probably not be granted for two years, the Guild regretfully abandoned this possibility.

When the Guild became aware that WNBC-FM had switched to an automated format and was no longer providing any particular service to the community, we considered various ways in which this might help the WNCN situation. We thought either that WNBC might be willing to take on the classical format, or, for various reasons including their affirmative action programs, that they might be willing to switch to jazz, thus relieving the "unique format" problem with WRVR.

The latter, of course, could only be done with that station's knowledge and approval and, accordingly, Guild members,

Connecticut and Washington counsel and I met with a representative of the Church to discuss this possibility. Unfortunately, neither "plan" with regard to NBC was successful.

As other possibilities or suggestions arose, they were considered by the Guild, acted upon if that was deemed appropriate, and often passed on to Mr. Clurman.

The Problems of WNYC

Starr asks hypothetically why the Guild, if concerned about classical music, didn't do something when WNYC's all-night classical program was reported in jeopardy. The simple answer is that we did.

Immediately after the article appeared in the Times, I spoke with several members of the Guild Board (there was no scheduled Board meeting around that time) who authorized me to make inquiry and to determine what, if anything, the Guild could do. One proposal was for the Guild to obtain contributions and foundation support and to program the 12-6 time slot (or, hopefully, a longer one) on a non-commercial basis.

I called City Councilperson Henry Stern, who is also a lawyer, to determine whether under WNYC's Charter, this would be legally feasible. I was particularly interested in the Council's position since they had passed a unanimous resolution decrying the loss of the NCN format as a unique cultural resource.

Mr. Stern felt that our proposal might be possible but suggested I call Ms. Lee Graham (phonetic) the head of the "Friends of WNYC." I spoke with Ms. Graham, who explained that our proposal was not consistent with her organization's aims, but told me to call Arnold Labaton, WNYC's station manager.

I then spoke with Mr. Labaton and suggested the possibility of the Guild taking over the "While the City Sleeps" program if WNYC lost its funding; he felt this would be inappropriate but also stated it was premature, since no final decision had been made. We had some further discussion about other ways in which the Guild might be of aid and ended with the agreement that we would stay in touch, particularly as the WNYC situation became more clearly defined.

Other Guild Efforts

Starr ignores another, and well publicized effort by the Guild to increase the amount of classical music programming available. With the cooperation of WBAI-FM and its staff, the Guild offers a weekly program of classical music and information about its activities on that station. The program is entitled "Guilding the Listener," is heard from 4-6 P. M. on Thursday afternoons, and is carried in the program listings of most newspapers in the metropolitan area.

The Guild has also initiated discussion with the management of WQXR as to whether modifications of their programming or simulcast operation might, during the pendency of this action, better serve the public interest, particularly of those former WNCN listeners who have been otherwise disenfranchised by the removal of WNCN's unique format.

For all of the above reasons, it is clear that the Guild has been truly concerned with the return of the unique WNCN format, has not "sabotaged" any legitimate effort by any other organization toward that end, and has attempted to fulfill its mandate and organizational responsibilities in the most responsible and productive fashion possible.

Kristin Booth Glen

Kristin Booth Glen

Sworn to before me this
4th day of April, 1975.

Michael David Rabon

Notary Public
STATE OF NEW YORK
NO. 31-3211515
Qualified in N.Y. County
Commission Expires March 30, 1977

NATIONAL REVIEW·150 East·35th Street, New York, New York 10016
Tel. 679-7330

WILLIAM F. BUCKLEY, JR.
Editor

A 397

March 10, 1975

Dear Miss Glen:

I have yours of January 31 in which you request access to what you call the "so-called pledge list." Request denied. The reasons:

1. The pledgors responded to my personal request, and that of several personnel from WNCN, to participate in a particular idea: the preservation of the WNCN sound. The initial optimism we felt was not justified. However, the WNCN Advisory Committee has been continually at work trying to achieve what the appeal to the pledgors sought to try to achieve. We are, therefore, continuing to work towards the same end.

2. You and your phony committee are not working to that end. You have grand jacobinical thoughts to pursue, and you are quite blunt in saying that you intend to persecute Starr Broadcasting irrespective of whether we succeed in bringing good music back to New York. You are clearly less interested in good music than in playing with the courts and seeking to intimidate Congress and the Federal Communications Commission.

3. I shall not be a willing party to delivering to you, for the purpose of your dissimulations, people who came to us in good faith seeking the restoration of good music in New York rather than revolutionary changes in present laws and

EXHIBIT O
ATTACHMENT A

A 398

administrative practices. Nor do I desire to turn over to you a list of people so that you can conveniently continue to libel me and my associates at Starr Broadcasting Group.

4. My attorneys advise me we are under no legal obligation to comply with your presumptuous request.

5. I hereby request the names of all the members of the WNCN Listener's Guild, so that I can address them for the purpose of telling them that in my opinion they are being defrauded by you, and that you have become in effect the principal obstacle to the return of good music to New York City. Please reply at your earliest convenience.

Yours faithfully,

Wm. F. Buckley Jr.

Miss Kristin Booth Glen
30 East 42nd Street
New York, N.Y. 10017

A 399

KRISTIN BOOTH GLEN
ATTORNEY AT LAW
30 EAST 42ND STREET
NEW YORK, N. Y. 10017

(212) MURRAY HILL 7-2033

March 27, 1975

Mr. Richard Clurman
Time-Life Building
1271 Avenue of the Americas
New York, New York

Dear Mr. Clurman:

This will confirm our telephone conversation of Monday, March 24. As I told you then - and at our last meeting - the WNCN Listeners' Guild has been repeatedly accused of "sabotaging" the efforts of your Advisory Committee. I believe the record will show that quite the contrary has been the case, and that we have cooperated with you whenever possible.

I personally feel that our relations have always been most cordial, and that our goals are similar, although the means by which they are pursued may differ. We are all quite disturbed by these unwarranted charges of sabotage, and would appreciate a response from you indicating that this has not been your experience.

I would appreciate a prompt reply. Thank you for your continuing courtesy.

Sincerely,

Kristin Booth Glen

(Ms.) Kristin Booth Glen
Counsel, WNCN Listeners' Guild

Hand delivery

EXHIBIT O
ATTACHMENT B

A 400

RICHARD M. CLURMAN
TIME & LIFE BUILDING
ROCKEFELLER CENTER
NEW YORK, N.Y. 10020

March 27, 1975

Dear Ms. Glenn:

I have your letter of March 27 inquiring where I have evidence that the WNCN Listeners' Guild has been engaged in "sabotaging" the efforts of the WNCN Advisory Committee of which I am the chairman.

I have neither evidence nor experience of my personal knowledge that would justify those conclusions. If I recall correctly, I do believe at an early meeting of your Guild, the executive committee voted disapproval of any effort of ours to convert WRVR into a classical music station. But I am not aware, apart from that formal action, that any effort either collectively or by individual members of your Guild acted on that initial resolution.

On the contrary, in face-to-face meetings, as well as by telephone, I have understood that your Guild's activities and the activities of our Committee have simply been towards entirely different objectives: yours to challenge Starr before the FCC and the Courts and ours to find a new outlet for WNCN-type music.

Our committee has never opposed your effort nor endorsed it. And within my knowledge I have no reason or evidence to think you have opposed or do now, our effort to accomplish our different objectives.

Sincerely,

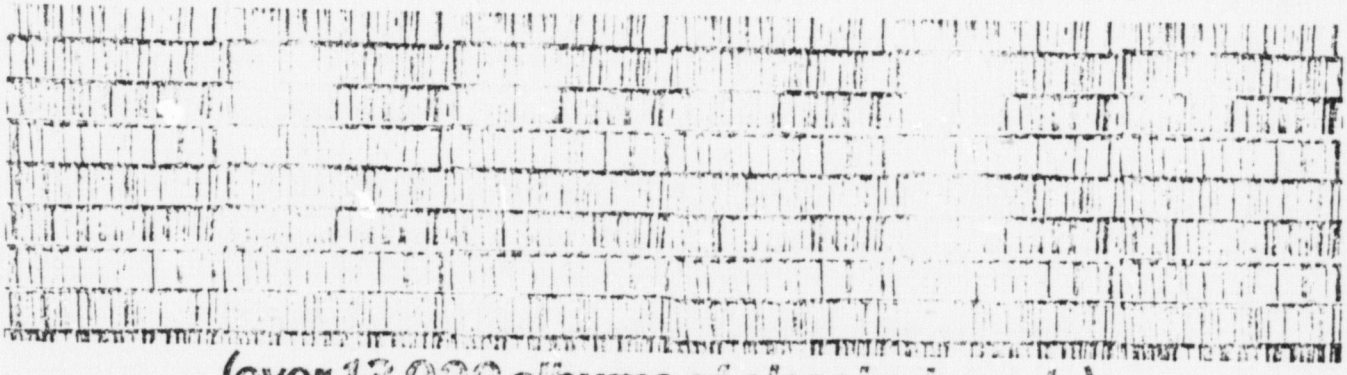
Richard M. Clurman

Ms. Kristin Booth Glen
30 E. 42nd Street
New York, N. Y. 10017

EXHIBIT O
ATTACHMENT C

Attention QXR listeners:

WNCN-104.3 FM is purely classical 24 hours a day.



(over 13,000 albums of classical music)

WNCN 104.3 FM

STARR BROADCASTING GROUP, INC.
A STARR GROUP STATION

FM Guide, Sept. 1974 pN20

EXHIBIT P

A 402

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ROBERT J. SHACK, being duly sworn, deposes and says:

I am, and at all times relevant herein, have been President of the [illegible] Guild. I have read the affidavit of Kristin Booth Glen, sworn to on April 4, 1975, and I agree entirely with her description of what occurred at our joint meeting with Messrs. Sturman, Buckley and Starr et al., and with her further description of the response of the Guild and the subsequent efforts it took to return classical music to the airwaves of New York.

Robert J. Shack

Sworn to before me this
8 day of April, 1975.

Beatrice Weinberger
Notary Public

BEATRICE WEINBERGER
NOTARY PUBLIC, State of New York
No. 31-9575590
Qualified in New York County
Commission Expires March 30, 1976

EXHIBIT S

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

ROBERT J. SCHACK, being duly sworn, deposes and says:

I am a citizen of New York and reside at 330 East 71st Street, Apartment 2F, New York, New York 10021. I am the president of the WNCN Listeners' Guild, Inc., Room 712, Carnegie Hall, 881 Seventh Avenue, New York, New York 10019.

On the evening of November 6, 1974, at or about 8 p.m., using a cassette tape recorder, I recorded a statement, the transcript of which is attached as Attachment "A", being read by Mr. Richard Clurman, chairman of the WNCN Advisory Committee. I had previously spoken with Mr. Clurman in person and by telephone and recognized his voice while he was reading the statement on the radio and subsequently when playing back my recording of it. At the beginning of his statement, which I was unable to catch in time to record, Mr. Clurman identified himself as the person reading the statement, as did the announcer introducing the statement.

At all times since recording the statement, and at this time, I have maintained the cassette on which I recorded it secure.

Immediately upon recording the statement, I played it back to be sure that no distortion had been introduced by the recording equipment or cassette I was using. The tape reproduced his statement as I then recalled it had just been read. That same evening and in the first hours of November 7, 1974, I listened to his statement being broadcast on WNCN-FM approximately hourly. I personally prepared the attached transcript of Mr. Clurman's statement. Based on my recollection of Mr. Clurman's statement as I heard it while I was recording it and subsequently that evening and on my careful comparison of the attached transcript with my memory and the recording, I hereby certify that the attached transcript is an accurate, true and faithful reproduction of his statement as I recorded it.

Sworn to before me this
8th day of April, 1975

Robert J. Schack
ROBERT J. SCHACK

EXHIBIT J

A 404

TRANSCRIPT OF STATEMENT READ ON WNCN-FM ON NOVEMBER 6, 1974, AT OR ABOUT 8 P.M., BY RICHARD CLURMAN

CLURMAN: ...changing its format to rock music, listeners in this area could lose a rare treasure of classical music pleasure and a unique cultural resource. For the past several weeks, the WNCN Public Advisory Committee, of which I am chairman, has been working diligently to remedy this major musical loss. We have been pursuing alternatives, ranging from our maximum objective, the complete recreation of the WNCA for-, NCN format on another comparable twenty-four hour a day F M frequency, to such lesser options, involving only an increase in the classical music on stations that already play some. We have not yet put together that replacement, but we remain hopeful, determined and active. More than twenty thousand listeners have already sent in their pledges of support. We will keep those devoted listeners of WNCN informed of our efforts to hold the format and staff of WNCN together. If you wish to be so informed directly, and have not yet registered your interest with us, please mail your name and address on a postcard or letter to the WNCN Advisory Committee, two west forty-fifth street, New York ten thousand thirty-six. All interested listeners, of course, will be kept aware of developments through the press, but if you want to be individually informed and have not yet sent in your name and address, please do so immediately, I repeat again, by sending a letter or postcard to the WNCN Advisory Committee, two west forty-fifth street, New York ten thousand thirty-six. We are not now seeking further pledges, just the identity of especially interested listeners. We are determined to find for you the best solution in the public interest that we can. Thanks very much. You will be hearing from us.

ANNOUNCER: ~~The~~ RJS Temperature is now fifty-eight degrees....

EXHIBIT U, ATTACHMENT A

A 405

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FCC 75-539
34731

In re Complaint of)
)
WNCN Listener's Guild)
)
against)
)
Starr WNCN, Inc.)
Licensee of Station WQIV(FM))
(Formerly WNCN(FM)))
New York, New York)

MEMORANDUM OPINION AND ORDER

Adopted: May 8, 1975 ; Released: May 16 ,1975

By the Commission: Commissioners Wiley, Chairman and Robinson concurring in the result; Commissioner Hooks dissenting.

1. The Commission has before it an Application for Review of the Broadcast Bureau's ruling of October 3, 1974 (49 FCC 2d 36), filed November 4, 1974 by the WNCN Listener's Guild (Guild); a supplementary affidavit to that Application for Review filed by the Guild on November 5, 1974; an Opposition to the Application for Review filed on December 23, 1974 by Starr WNCN, Inc. (Starr); and a Reply to the Opposition to the Application for Review filed by the Guild on January 6, 1975.

2. The complaint in this case was filed with the Commission on September 23, 1974, as part of a petition seeking relief in connection with WNCN's proposed change of format from classical music to progressive rock. It stated that WNCN was the only 24-hour-a-day classical music station in the New York area, and its programming, "in musicological terms," was more broad and varied than "its 'rival' station"; that WNCN had announced its intention to change format from classical to rock music; that several groups were formed to oppose the change, and there was much comment in the New York press adverse to the format change; that as a result of protests from listeners over the change, the management of WNCN embarked on a "save WNCN" campaign whereby it solicited pledges for a proposed non-commercial station which would assume WNCN's call letters and format; that "editorial" announcements which presented the station's "'plan' for a listener sponsored station on another channel. . .as the only alternative to a total loss of WNCN's classical programming" were broadcast "on virtually an hourly basis for more than two weeks"; that WNCN had "not sought out or presented conflicting views"; that "[l]iterally hours of the station's program time were filled with the clearest imaginable example of licensee editorializing in its own behalf"; and that Springfield Broadcasting Corp., 45 FCC 2083 (1965) stood for the proposition that there is a "particular duty to air contrasting view[s] when [the] licensee is personally involved in the controversy." The complaint also contained transcripts of the eighteen announcements broadcast over WNCN which solicited pledges for the proposed non-commercial station, and copies of numerous newspaper and magazine articles about WNCN's proposed format change.

3. In a response to the complaint, filed September 27, 1974, Starr stated that "the announcements broadcast over the air by WNCN. . .clearly did not present one side of a controversial issue, even assuming that WNCN's format change may be so characterized"; that "the announcements simply took note of WNCN's change of format and requested that listeners fond of the classical music format pledge money to sustain the format on a non-commercial station" 1/; and that the "merits of WNCN's change of format were not even mentioned, let alone argued during the broadcasts." Starr submitted transcripts of nine announcements which it said were broadcast in connection with the "Save WNCN" campaign.

4. In a reply to Starr's response, filed September 30, 1974, the Guild stated that "the 'Save WNCN' announcements have been logged as editorials"; that the announcements submitted by Starr "demonstrate that the WNCN announcements soliciting listener pledges put forth one plan only: the continuation of the WNCN format without commercial interruption"; that "to transfer the WNCN format intact to a noncommercial station, is one side of the controversy over WNCN's change of format"; that the Commission stated in its Fairness Report, 48 FCC 2d 1 (1974) "that 'a broadcast may avoid explicit mention of the ultimate matter in controversy and focus instead on assertions or arguments which support one side or the other on that ultimate issue'"; that "[r]easonably, no licensee could dispute that the 'Save WNCN' campaign was one way to continue the unique WNCN format, but not the only way"; that Starr's response contained a "very serious omission" in that it contained only nine of the eighteen announcements cited in the original complaint; that these "omissions are critical" because "the Guild's transcriptions show that the station aired other announcements which more directly present WNCN's plan to save its own format as a viewpoint on the overall format change issue," citing as an example an announcement which stated:

> We would appreciate any and all pledges to help make WNCN a continuing force in New York music, to maintain it as a full-time classical music station in New York City and that can only be done if it becomes a listener supported, non-commercial station because this frequency is being taken October 5th by another format, a different kind of music. If you like classical music, if you like WNCN, and you feel it is worth it to you, to support it by financial contribution. . . then call right now. . .We've got to see how broad the base of support is for WNCN. If there's enough support to justify, the station will continue. If not, it won't; it's as simple as that, as of October 5th.

The Guild stated further that "the area where licensees have the highest duty of fairness. . .[is] where the licensee itself has a personal or financial interest in or is the subject of a controversial issue of public importance" citing Springfield Broadcasting Corp., supra; and that "the fact that WNCN is in fact personally involved in the controversy over its proposed change of format necessarily colors the Commission's review of the licensee's reasonableness and good faith in discharging its fairness doctrine obligations."

1/ The question of whether some of these announcements may have been false and misleading is being considered in connection with the Guild's petition to revoke Starr's license to operate WNCN/WQIV.

5. In its ruling the Bureau noted that the Commission stated in its Fairness Report, supra, that "a broadcast may avoid explicit mention of the ultimate matter in controversy and focus instead on assertions or arguments which support one side or the other on that ultimate issue" and that "in such a case the fairness doctrine would be applicable." However, the Bureau stated further that:

> [T]he Commission made it clear [in the Fairness Report] that the responsibility for and discretion in determining whether or not a controversial issue of public importance was presented is still vested in the licensee. Assuming arguendo that the issue of WNCN's format change is a controversial issue of public importance in the New York City area, after reading the transcripts submitted by both. . .[the Guild] and WNCN we cannot say that WNCN was unreasonable in determining that the announcements in question did not present one side of a controversial issue because the announcements "simply took note of WNCN's change of format" and did not argue the merits of the change. . .Here it can reasonably be said that the announcements urging listeners to pledge money to support continued classical music programming did not advocate a position on the dispute over whether WNCN should change its format. The finding of a judgment within the bounds of reason, whether or not it is the same judgment we would reach as an initial matter, is dispositive of our function under the fairness doctrine. (49 FCC 2d at 38)

In view of the above the Bureau ruled that no Commission action was warranted on the Guild's complaint.

6. In an Application for Review filed on November 4, 1974, the Guild stated that "[t]he most glaring deficiency in the Bureau's decision is that it did not address the Guild's principal contention: that as to an issue in which a licensee is itself personally and financially self-interested, a higher standard of good faith discretion is required in judging its refusal to air contrasting viewpoints"; that "[a]s to such issues, a stronger showing is needed from the licensee that it has made a 'reasonable' judgment that no controversial issue of public importance is presented by its programming"; that "[i]n the past. . .the Commission consistently regarded issues in which a licensee's personal finances are at stake as requiring a higher fairness showing," citing Springfield Television Broadcasting Corp., supra; that the October 3, 1974 ruling did not deal with the Guild's contentions that the transcripts supplied by Starr in its September 27, 1974 response "were incomplete in material respects"; that "many of the omitted announcements most directly presented WNCN's plan as a viewpoint on the overall format change issue"; that the alleged omissions "raised equal significant lack of candor issues that went to the basic question of the licensee's exercise of 'good faith discretion'"; that the October 3, 1974 ruling also did not deal with the Guild's contention that the announcements were logged as editorials;

that the Guild had "raised this issue not only to show that these messages, by Starr employees and the Chairman of its Board, were in fact corporate and station viewpoints on a controversial issue. . .[but also] to show that Starr knew them to be so, and were lacking in candor in representing to the Guild and the Commission that they were not, and thus could not be assumed to be acting with the 'good faith' and 'reasonableness' required of the licensee in the fairness area"; that the October 3 ruling also did not deal with the Guild's contention that "many of the announcements themselves contained statements that showed that the licensee was well aware that its format change was a controversial issue of public importance, and that it was advocating one viewpoint as the only way to deal with that controversy"; that the Guild's prior pleadings showed that "under any standard of licensee good faith -- and particularly not under the higher standard of licensee self-interest -- [Starr] could not reasonably believe that it was not airing a viewpoint on a controversial issue of public importance"; and that "[i]t is. . .evident from the [Broadcast] Bureau's opinion that it did not take a hard look at [the] transcripts, citing only one of them. . . and accepting Starr's view that they only 'touched upon. . .incidentally' a controversial subject and 'simply took note of WNCN's change of format.'"

7. In an Opposition to the Application for Review, filed on December 23, 1974, Starr stated that "WNCN's proposed format change does not constitute" a controversial issue of public importance; that even if the format change was determined to be a controversial issue of public importance "the thrust of the announcements in question was clearly upon securing pledges to support a classical format on a non-commercial station and not at all upon the merits of management's decision to alter WNCN's format"; that Springfield Television Broadcasting Corp., supra, does not impose "a higher standard of good faith discretion" on licensees, but instead the Commission said in that case that "the fact that a licensee editorialized upon a controversy in which it was personally involved was immaterial so long as its editorials were based upon a good faith judgment of the needs and interests of its community"; that the Broadcast Bureau was correct in ruling that Starr was not unreasonable in determining that the "Save WNCN" announcements did not address the issue of the format change; that WNCN broadcast only eleven taped announcements on the "Save WNCN" campaign; that nine of these were submitted with Starr's September 27, 1974 reply to the complaint; that the other two had been "accidentally erased," but had been "reconstructed" from memory and transcriptions were enclosed; that "the majority of the transcripts" submitted by the Guild "are transcriptions. . .of ad lib (as opposed to taped) announcements made by WNCN announcers at frequent intervals"; that "[n]o scripts are available of these ad libs" and WNCN does not know how many of these "ad lib" announcements may have been made, but all announcers were instructed to refrain from discussing the merits of the format change over the air; and that none "of the 11 transcripts submitted by Starr nor any of the 18 transcripts submitted by the Guild discuss, argue or comment upon the merits of the WNCN format change."

8. In a Reply to the Opposition to the Application for Review, filed January 6, 1975, the Guild reasserted its contention that "a higher standard must be applied in judging a licensee's actions in failing to air contrasting viewpoints on issues in which it is personally and financially involved," and stated that "[i]n speaking of the licensee's fairness doctrine

obligation, the Commission [has] specifically held that: 'That responsibility assumes special significance with respect to issues which affect the licensee personally and financially'. . .(emphasis added)," quoting from WSOC Broadcasting Company, 40 FCC 468 (1958); that in its Opposition Starr "[i]ncorrectly states the holding of" Springfield Television Broadcasting Corp., supra, which "ultimately. . .[held] that: 'where a licensee has made a good faith judgment that it should present its viewpoint on a matter in which it is personally involved the licensee has a particular duty to insure that the requirements of fairness are satisfied'. . .(emphasis added)" quoting from Springfield Television Broadcasting Corp., supra at 2086; that in Springfield the "Commission went on to state: 'Springfield, however, far from making the special efforts to achieve fairness required in this case, has not shown that it made the minimum efforts required in the ordinary case. . .(emphasis added)"; and that "[t]his language unambiguously imposes a higher showing of good faith and reasonableness upon the licensee." The Guild claims that our ruling of December 20, 1974, Public Communications Inc., ___ FCC 2d ___ (FCC 74-1367), 2/ may appear to be "in conflict with this established policy" of requiring a "higher showing of good faith and reasonableness upon the licensee" in making its determination with regard to an issue in which it might have a personal interest. The Guild characterized Public Communication Inc. as holding that "the fact that a licensee's own private financial interests were involved in. . .[a] particular issue did not change the standard to be applied"; and stated that in that case the Commission did not cite or distinguish the cases relied upon by the Guild, and had "departed from its prior precedent without overtly recognizing this fact and adequately explaining its grounds for doing so." The Guild repeated its arguments that the "Save WNCN" announcements were logged as editorials.

9. We have examined the pleadings herein and believe that the Bureau's denial of the complaint was correct. However, we believe that certain allegations set forth in the Application for Review merit comment.

10. In its pleadings the Guild has cited Springfield Television Broadcasting Corp., supra, and other cases as supporting its contention that where a licensee is "personally and financially self-interested" in an issue "a stronger showing is needed from the licensee that it has made a 'reasonable' judgment that no controversial issue of public importance is presented by its programming." However the fairness doctrine does not impose any such double standard of licensee "reasonableness," and the Guild's reliance on Springfield and the other cases which it cited is inapposite. None of the cases cited by the Guild involves the issue of the reasonableness of the licensee's determination as to whether any particular issue

2/ In that case the complainants had argued that since the licensees involved had a personal financial interest in the broadcast license renewal legislation then pending before Congress, the Commission should not adhere to the normal fairness doctrine standard of reasonableness and good faith in reviewing the licensee's judgments with regard to coverage of the license renewal legislation.

is a controversial issue of public importance, or whether any particular broadcast contained a discussion of one side of that issue so as to require the presentation of contrasting viewpoints. Also, none of those cases imposes a requirement for a "higher" or "stronger" showing of reasonableness on the part of a licensee in making such a determination with regard to an issue in which that licensee might have a personal interest. When the Commission stated in Springfield that "where a licensee has made a good faith judgment that it should present its viewpoint on a matter in which it is personally involved, the licensee has a particular duty to insure that the requirements of fairness are satisfied," the Commission was speaking in the context of the licensee's special obligation to present contrasting viewpoints in such a situation, i.e., where the licensee has determined that it has presented programming on a controversial issue of public importance. Indeed, this particular quote, the language most often cited by the Guild, indicates that the "particular duty" (to air contrasting viewpoints) attaches only after the licensee has made its "good faith judgment." Springfield and the other cited cases stand for the proposition that where a licensee presents programming on a controversial issue of public importance in which that licensee has a personal interest and then fails to make a special effort to present contrasting viewpoints, that licensee will have "seriously failed to discharge its responsibility to operate in the public interest." Id. at 2086. Thus the Commission was not "depart[ing] from its prior precedent" in ruling in Public Communication, Inc., supra, that the fact that a licensee may have a private interest in an issue did not change the standard of "reasonableness and good faith" to be applied to the licensee's judgments as to whether a controversial issue of public importance exists or whether the licensee's programming presents a viewpoint on one side of that issue. As the governmental agency charged with the responsibility for licensing and regulating broadcast stations, in enforcing the fairness doctrine the Commission must maintain a delicate balance between insuring that broadcast licensees operate in the public interest and reducing to a minimum Commission review of licensees' editorial judgments. Therefore it is a well established principle of the fairness doctrine that the Commission will only review a licensee's decisions to determine if they can be said to be reasonable and in good faith, and the burden is on the complainant to show that such decisions are not reasonable or in good faith. As the Commission stated in Public Communication, Inc., supra:

> We recognize that a licensee's private interest may color its judgment, but we do not agree with the complainant's remedy, which is essentially to use a different standard wherever a licensee's own interest may be involved.

The standard of licensee "reasonableness and good faith" is not a quantitative standard susceptible to measurement or classification into categories such as "reasonable" and "more reasonable," or "bad faith," "good faith" and "best faith." Any attempt to establish and enforce different standards of licensee "reasonableness" in cases where licensees may have private interests would lead to additional delicate determinations by the Commission as to degrees of licensee interest in the particular issue and other inappropriate Commission

intrusions into the licensees' editorial discretion. This is not to say that some specific showing, not here given, that a licensee's personal financial self-interest did in fact influence that licensee in its fairness doctrine decisions would not affect the Commission's review as to that licensee's reasonableness and/or good faith. However, the bare statement by a complainant that a licensee is or may be personally interested in some issue does not shift the burden of proof to the licensee to show that its decisions with regard to that issue were "more" reasonable.

11. The basic question before the Commission in this case is whether the Broadcast Bureau was correct in ruling that, assuming arguendo that the change in format of WNCN constituted a controversial issue of public importance, Starr was not unreasonable or acting in bad faith in determining that the "Save WNCN" announcements did not present one side of such an issue "because the announcements 'simply took note of WNCN's change of format' and did not argue the merits of the change." 3/

12. The Guild asserts that the "Save WNCN" announcements were logged as editorials, and that this fact is significant "not only to show that these messages, by Starr employees and the Chairman of its Board, were in fact corporate and station viewpoints on a controversial issue. . .[but also] to show that Starr knew them to be so, and was lacking in candor in representing to the Guild and the Commission that they were not, and thus could not be assumed to be acting with the 'good faith' and 'reasonableness' required of the licensee in this area." However, the fact that the "Save WNCN" announcements may have been logged as "editorials" is irrelevant to a decision as to whether Starr was unreasonable in determining that the "Save WNCN" announcements did not address the issue of the format change. Section 73.112 of the Commission's rules, which establishes the requirement that editorials be logged as such, defines editorials as "programs presented for the purpose of stating opinions of the licensee." The Guild incorrectly assumes that any presentation labeled an "editorial" is, ipso facto, a presentation on a controversial issue of public importance. However, the question as to whether or not any particular presentation addresses a particular controversial issue of public importance or whether a licensee has acted reasonably and in good faith in resolving that question is determined by the content of the presentation, and not upon the placing of any label such as "editorial," or "commentary" or "opinion," on that presentation.

13. The Guild further asserts that the nine transcripts supplied by Starr in its response to the initial complaint "were incomplete in material respects" in that they did not include all of the eighteen announcements represented by the transcripts submitted in the Guild's original complaint; that "many of the omitted announcements most directly presented WNCN's plan as a viewpoint on the overall format change issue"; that Starr's omission of

3/ Since the Broadcast Bureau was correct and the Guild's complaint may be disposed of on this issue, it is unnecessary to rule on whether the WNCN format change was in fact a controversial issue of public importance.

these announcements raised the issue of whether Starr was acting in good faith; and that "[i]t . . .evident from the [Broadcast] Bureau's opinion that it did not take a hard look at [the] transcripts, citing only one of them. . .and accepting Starr's view that they only 'touched upon. . .incidentally' a controversial subject and 'simply took note of WNCN's change of format.'" There is nothing in the Communications Act or in the Commission's rules which requires that licensees maintain tapes or transcripts of their programming (with certain limited exceptions not here relevant 4/). Since Starr was aware of the fact that the transcripts of the eighteen announcements submitted by the Guild would be part of the official record upon which the Bureau would make its decision, and made no effort to deny their accuracy or the fact that they were or may have been broadcast, Starr's failure to submit transcripts of all of the announcements cited by the Guild, which transcripts Starr was not required to maintain in the first place, does not indicate a "lack of candor" or bad faith on Starr's part. As to the Guild's contention that the Broadcast Bureau "did not take a hard look at [the] transcripts" because it quoted "only one of them" and accepted Starr's view that the announcements "only 'touched upon. . .incidentally' a controversial subject and 'simply took note of WNCN's change of format,'" the Bureau's ruling specifically stated that it had considered the transcripts submitted by both the Guild and Starr in determining that it could not be said that Starr acted unreasonably or in bad faith in determining that the announcements in question did not address the issue of the merits of the format change. 5/

14. In its Fairness Report, supra, the Commission stated that in determining whether a broadcast presented one side of a particular controversial issue of public importance, a licensee should:

> exercise his good faith judgment as to whether the. . .[broadcast] had in an obvious and meaningful fashion presented a position on the ultimate controversial issue. . .The licensee's

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4/ Section 73.123(a) of the Commission's Rules provides that when, during a discussion of a controversial issue of public importance, an attack is made on the honesty, character, integrity or like personal qualities of an identified person or group, the licensee must send to the person or group attacked, among other information, a tape, transcript or accurate summary of the attack within seven days of the broadcast. Thus, even in the "personal attack" situation a tape or transcript is not absolutely required. Under an amendment to the Communications Act, each licensee receiving assistance from the Corporation for Public Broadcasting is required to retain for 60 days a recording of the sound portion of any program in which any issue of public importance is discussed; however, this provision is not here relevant.

5/ It should be noted here that the one announcement which the Broadcast Bureau quoted in its ruling (see paragraph 4, supra) was the only one which the Guild cited to support its contention that the announcements directly presented "WNCN's plan to save its own format as a viewpoint on the overall format change issue."

> inquiry should focus not on whether the statement bears some tangential relevance to the. . .[issue in] question, but rather on whether that statement, in the context of the ongoing community debate, is so obviously and substantially related to the. . .issue as to amount to advocacy of a position on that question. If, for example, the arguments and views expressed over the air closely parallel the major arguments advanced by partisans on one side or the other of the public debate it might be reasonable to conclude that there had been a presentation on one side of the ultimate issue. . .

Further, as the Bureau stated in its October 3 ruling:

> The Commission has long held. . .that it is both the responsibility and within the discretion of the broadcast licensee or network to determine whether a controversial issue of public importance has been presented in its programming and that the burden is on the complainant to establish that the licensee's or network's judgment in such matters was unreasonable or in bad faith. Gary Lane, 38 FCC 2d 45 (1972); Application for Review Denied, 39 FCC 2d 938 (1973).

15. In its pleadings prior to the Broadcast Bureau's decision the Guild contended that "to transfer the WNCN format intact to a noncommercial station is one side of the controversy over WNCN's change of format," and that "[r]easonably no licensee could dispute that the 'Save WNCN' campaign was one way to continue the unique WNCN format, but not the only way." In its Application for Review the Guild submits conclusory assertions to the effect that "under any standard of good faith. . .[Starr] could not reasonably believe that it was not airing a viewpoint on a controversial issue of public importance" and that "many of the announcements themselves contained statements that showed that the licensee was well aware that its format change was a controversial issue of public importance, and that it was advocating one viewpoint as the only way to deal with that controversy." Two of the announcements in question did characterize the "Save WNCN" campaign as the "only way" to preserve the "unique WNCN format," and it is arguable that a few of the others indirectly made the same point. 6/ It is also arguable that in this light the "Save WNCN" campaign could be considered to be "obviously and substantially related" to the format change. However, it appears from the numerous newspaper articles submitted by the Guild and from the pleadings submitted by the Guild and by Starr in various other proceedings before the Commission and the Courts that the "major arguments advanced by partisans on one side or the other of the public debate" on the WNCN format change concern the "economic viability" of the classical music format on a commercial radio station and possible misrepresentation on Starr's part in representing to the Commission in its 1972 Application for Transfer of Control of WNCN that it would continue the twenty-four-hour-per-day classical music format. Nowhere in any of the material submitted by the Guild is it indicated that the "Save WNCN" campaign or any of the statements made in the

6/ The two announcements which specifically characterize the "Save WNCN" campaign as the "only way" to preserve WNCN's format were not contained in the transcripts submitted by WNCN. WNCN stated that these were not taped announcements broadcast multiple times, but were "ad lib" announcements broadcast live by WNCN's announcers. Examples of announcement transcripts submitted by both WNCN and the Guild are attached as Appendix A.

"Save WNCN" announcements were among the "major arguments" on either side of the format change controversy. As indicated above, there are many close, arguable points in this case. However, it is a well settled principle of the fairness doctrine that in ruling on a fairness doctrine complaint it is not the Commission's function to substitute its own judgment, or that of the complainant, for the judgment of the licensee; the Commission's only function in this area is to determine whether the licensee can be said to have acted reasonably and in good faith, and, as stated above, the burden is on the complainant to show that the licensee's judgment was unreasonable or in bad faith. The Guild has not, either in its pleadings prior to the Broadcast Bureau's ruling or in its Application for Review, submitted any specific information to show how the "Save WNCN" announcements presented a viewpoint on the issue of whether WNCN should change its format in such an "obvious and meaningful fashion" that Starr was unreasonable in determining that the announcements "simply took note of WNCN's change of format" and that the "merits of WNCN's change of format were not even mentioned, let alone argued during the broadcasts."

16. In view of the foregoing, pursuant to Section 1.115(i) of the Commission's Rules, the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Vincent J. Mullins
Secretary

APPENDIX A

Transcripts of the following announcements were submitted by both WNCN and the Guild:

> This is William F. Buckley, Jr., Chairman of the Board of Starr Broadcasting Group. The response to the 'SAVE WNCN' drive has been electric. If you continue to send in your pledges at the current rate, we'll be over the top by the 15th of September, and the result will be a continuation of the music in the unique blend you've become accustomed to, with this difference: The new WNCN would not carry commercial advertising. The music director, David Dubal, has said that if the drive succeeds, the new WNCN will be the finest music station in the world. My own opinion is that it's that already. Please make out your pledge now. Write to: SAVE WNCN, 2 West 45th Street, New York. The zip code, 10036. Thank you.
>
> * * *
>
> This is Elise Topaz for "SAVE WNCN." The musical programming you are listening to right now is available only on WNCN. Think about that. There is no other station in the United States that offers the depth of programming that WNCN brings you every day, 24 hours-a-day. In the last week, 300 people have taken 16,000 pledges to preserve fine music in New York City. That's 16,000 out of an audience of 400,000. If you are listening to this announcement and you have not called in your pledge, all we can say is, we need your help. There are no more sponsors to pay our way; from now on it's just you and us and the music. Please call now: 212-242-2200 or write "SAVE WNCN," 2 West 45th Street, N. Y. 10036. The phone number again is 242-2200. Thank you.

Transcripts of the following announcements were submitted only by WNCN:

> This is William F. Buckley, Jr. I am the Chairman of the Board of the Starr Broadcasting Group. You will have heard that Station WNCN will no longer broadcast in the format to which we are accustomed, beginning on October 5th.
>
> Between now and then we hope to conclude arrangements that would permit the continuation of the WNCN format, together with its musical director and its announcers, on another channel. That channel would not carry commercial announcements of any sort. We are, at this point, discussing with several New York channels the possibility of turning over our extraordinary collection of records, which we value second only to the unique staff that has made WNCN possible.

What we need from you is an expression of interest, concretely. Would you be willing to make an annual contribution to a non-commercial station that would perform for you what WNCN is now performing. Conceivably, we could even arrange to transfer the call letters, to which we are all accustomed, on over to the new channel.

The officers of Starr and representatives of other stations will begin their meetings on Thursday, September the Fifth. If we can have from you an expression of your support by then, that would help.

Write to "SAVE WNCN"; mention the amount of money you would be willing to donate if and when the arrangements go through. . . yes, it would be tax deductable. And send your letter to: WNCN, 2 West 45th Street, New York, New York.

Thank you.

* * *

This is Elise Topaz, a member of the staff of WNCN. We are very sad about the impending format change. Beginning October 5, 1974, WNCN will no longer offer the music to which we have become accustomed. Without the 24 hour-a-day broadcast, it is obvious that the musical life of New York City will suffer a serious loss. William F. Buckley, Jr., Chairman of the Board of Starr Broadcasting Group, and indeed an appreciative listener of the station, has broadcast a taped statement several times over the last few days, which gives us hope that WNCN's survival is still possible. In his statement, he mentions a new station. This new station would be non-commercial, and in order for this possibility to exist, we must have an expression of gigantic support from you - our audience. We urge you to write to "SAVE WNCN," 2 West 45th Street, N.Y., 10036 and pledge what you would be willing to donate on an annual basis. Please send your letters as soon as possible. We beseech your support. That's "SAVE WNCN,". . .

* * *

This is Elise Topaz with the latest report on the SAVE WNCN campaign. On Sept. 17, the Committee to Save WNCN met for the first time. Richard Clurman, President of City Center, was elected as acting committee chairman. The procedure for the transference of the WNCN assets to another station were discussed. As far as the negotiations with stations WBAI, WNYC, and WFUV are concerned, there have been no formal proposals to this date. We will keep you informed as to future details. The members of the Committee to Save WNCN are Ricahrd Clurman, Schuyler Chapin, Dr. Frank Statnton, David Oppenheim, Theodore Sorensen, Dixon Palmer, Rosalyn Tureck, and William F. Buckley, Jr.

Transcripts of the following announcements were submitted only by the Guild: */

> Announcer: As of October 5th you will no longer hear classical music broadcast on WNCN. If this shocks you, it is certainly meant to. There is only one way that we can possibly keep classical music coming to you, and I know that you will enjoy hearing it continue, and that is if you pledge to this station. What we're doing is setting up an independent classical music station, with the same staff now operating WNCN, with the same classical music, with one exception: there will be no interruptions like this, we hope, and there will certainly be no commercials. It will be a non-commercial station, which will enable us to bring very, very long selections to you uninterrupted, and I'm sure you will enjoy hearing that, but you must please help us, and we desperately need help. The number to call for a pledge is (212) 242-2200. I will mention that $500,000 is the minimum that we do need for this experiment. It will work, it must work, and frankly, and very happily I will say that we have received pledges in excess of $400,000. So there is not much more that is needed, but time is running short right now. We must raise the extra $100,000 within the next several days, so, please, pledge, to WNCN. Keep WNCN on the air. And only you could do it. Only the listeners, no one else. The number to call is (212) 242-2200, and please call right now.
>
> * * *
>
> Announcer: To date on our telephone campaign, pledge that you have been so generous in your calls, and we hope that many more of you respond, we have. . .34,000 dollars has been pledged so far in this effort to keep WNCN alive and well. We hope that these pledges will continue to come throughout the early evening and late night hours.
>
> * * *
>
> Dubal: Within a short time the WNCN audience has proved its magnificent loyalty to our classical format we have achieved our goal of one half million dollars. May I thank all of the fine volunteers under the dedicated efforts of Elise Topaz who helped make this possible, and of course the twenty-thousand people who wrote or called in pledges. We will keep you informed as to the negotiations that will hopefully put WNCN back on the air. I thank each and every one of you.

See also the announcement cited in paragraph 4 of the Memorandum Opinion and Order.

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*/ These are examples of the ad lib announcements referred to in paragraph 7 of the Memorandum Opinion and Order.

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

WNCN LISTENERS' GUILD,	:	
Petitioner,	:	
- against -	:	Docket No.
FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES OF AMERICA,	:	
Respondents.	:	

PETITION FOR REVIEW

The WNCN Listeners' Guild, by its attorneys, hereby petitions this Court for review of the memorandum opinion and order of the Federal Communications Commission in WNCN Listeners' Guild, FCC 75-539, released May 16, 1975, denying Petitioner's fairness doctrine complaint against Starr-WNCN, Inc., Station WNCN-FM, New York.

This Court has jurisdiction pursuant to 47 USC 402 (a).

Dated: July 15, 1975.

Yours, etc.,

KRISTIN BOOTH GLEN
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